

**COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF LABOR AND INDUSTRY  
WORKERS' COMPENSATION OFFICE OF ADJUDICATION**

**DAYVED WOODARD**  
2115 West 32nd Street  
Erie, PA 16508

**CLAIM PETITION**

**CLAIM NO. 2607372**

vs

**PHB**  
7900 West Ridge Road  
Fairview, PA 16415

and

**ROYAL & SUN ALLIANCE**  
P.O. Box 4701  
Syracuse, NY 13221

**BEFORE: JUDGE CARMEN LUGO**  
3400 Lovell Place  
Erie, PA 16503

**DATE AND PLACE OF HEARING:**  
JANUARY 27, 2005  
3400 Lovell Place  
Erie, PA 16503

**APPEARANCES:**

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CHRISTOPHER MCCULLUM

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NONE

**Claimant's:**

NONE

**Employer's:**

NONE

P R O C E E D I N G S

1  
2 THE JUDGE: This is the time set  
3 for a third hearing in the case of  
4 Dayved Woodard versus PHB. The  
5 claimant is present and is  
6 represented by Attorney Wayne  
7 Johnson, Jr. Here on behalf of the  
8 employer and its carrier is  
9 Attorney Melissa Petersen.

10 Pending before me is a claim  
11 petition regarding an alleged date  
12 of injury of January 1, 1999.

13 Attorney Johnson, you indicated  
14 that you would have several  
15 witnesses today?

16 MR. JOHNSON: That's correct,  
17 your Honor.

18 THE JUDGE: Who do you wish to  
19 call first?

20 MR. JOHNSON: I would call  
21 Chris McCullum, who's outside. May

1 I grab him?

2 THE JUDGE: You may. Raise your  
3 right hand. Please have a seat.  
4 Keep your voice up so the court  
5 reporter can hear you. Please  
6 answer all questions verbally.

7 THE WITNESS: Okay.

8 THE JUDGE: Attorney Johnson,  
9 you may proceed.

10 MR. JOHNSON: Thank you, your  
11 Honor.

12 \* \* \*

13 CHRISTOPHER MCCULLUM,

14 called as a witness on behalf of the  
15 Claimant, and having been previously  
16 duly sworn, was examined and testified

17 as follows:

18 **DIRECT EXAMINATION**

19 BY MR. JOHNSON:

20 Q Mr. Johnson, could you please state your  
21 full name for the record and spell your

1 last name.

2 A Christopher J. McCullum, M-c-C-u-l-l-u-m.

3 Q What is your address, sir?

4 A 3402 Regis Drive.

5 Q Now, Mr. McCullum, have you ever met the  
6 claimant, Dayved Woodard, before this?

7 A No, just before.

8 Q You don't remember him from when you  
9 worked at PHB?

10 A No, no, I don't.

11 Q When did you work at PHB?

12 A I started in June of 2000 and worked all  
13 the way until September of 2000.

14 Q How did you come to be aware of any  
15 lawsuits or litigation between Mr.  
16 Woodard and PHB?

17 A I was reading it in the *Daily Times*, the  
18 newspaper, read the ad.

19 Q When you say ad, was there an ad or was  
20 it an article?

21 A It was an article and called the editor

1 and got some information on the lawyers  
2 that were handling it because it was like  
3 going through the same thing I was going  
4 through.

5 Q So what did you do? Did you contact the  
6 lawyer?

7 A Yes, I did. We talked several times,  
8 several times. We actually even met  
9 several times.

10 Q Do you recall who that attorney was?

11 A Jeff Connelly, I believe.

12 Q Why did you contact Attorney Connelly?  
13 What was your motivations or reasons?

14 A Well, like I said many times, if you took  
15 Dayved's name out and put my name on it,  
16 it would be the same thing and it was  
17 just a big deal, you know, I'm shocked.  
18 As a matter of fact, I was at work at the  
19 time I was reading it and I'm like, wow,  
20 you know, I had to call somebody, you  
21 know, and tell somebody that already

knew, I had told somebody this before and it's like, wow, you should call the lawyer and maybe you can be a help, you know.

Q All right. So you did not know Mr. Woodard?

A                      No, no.

Q Well, let me ask you this, you said you could have put your name in for his in the article that you read in the *Erie Daily Times*.

A                    Um-hmm.

Q        Could you go through any instances you personally had with PHB for the Judge.

A        You got time? I could start from day one. I remember getting hired, talking to the manager, he was like we are going to hire you as a "B" operator. I said okay. And he said I want you to meet the third shift foreman, I said okay. I already had the job. The foreman took me

1           around and he kept questioning me, do you  
2           really want this job, you know, are you  
3           really going to come, you know, like, I'm  
4           like, yeah, I need a job, I need to make  
5           money, are you really, you know, he was  
6           almost gave me a whole new interview,  
7           like you're not supposed to have this  
8           job, you know. Well, I'm like I already  
9           got the job. Well, I really want to  
10          start you off as a "C" operator. I don't  
11          know why they want to start you off as a  
12          "B".

13        Q        Could you tell the Judge what the  
14                difference is between a "B" and a "C"  
15                operator?

16        A        There was -- it's more technical things,  
17                you can read blueprints, you can do your  
18                own set-up work and things like that. A  
19                regular "C" operator is just an operator  
20                and also the pay rates --

21                   THE JUDGE: You guys need to



1 keep your voices down. If you're  
2 going to talk, you need to leave  
3 the room. Do you understand?

4 Thank you.

5 THE WITNESS: And also the pay  
6 is lower. "B" I think it was like  
7 50 cents extra or something like  
8 that.

9 BY MR. JOHNSON:

10 Q Do you recall who that supervisor was?

11 A No, I can't.

12 Q What other incidents did you have?

13 A Well, the biggest one was, you have a 90-  
14 day probation and they're supposed to let  
15 you know if you're doing good or doing  
16 bad before that 90 days. According to  
17 the foreman, I was just so terrible, I  
18 was just horrible. Now, the 90 days, it  
19 had been over 90 days, you know, and he  
20 said you're horrible, horrible, horrible,  
21 I don't think you should work here no

1 more and all this other stuff because you  
2 had an incident. Well, the incident  
3 happened where a machine they had me run  
4 that was supposed to be had a shutdown,  
5 it should have had a shutdown tag on it,  
6 but it didn't, the machine was throwing  
7 parts out. You stick parts into the  
8 chuck and when the machine starts up, it  
9 shot the parts out. Now, it had already  
10 been down, but they put me on the machine  
11 and when it crashed, they blamed it on  
12 me, oh, you tore up the machine. The  
13 third shift foreman just went off, oh,  
14 this ain't going to look good on your  
15 record, this is just so terrible. But I  
16 talked to the operator that normally runs  
17 it on first shift and she said that  
18 machine has been down for days, Chris.  
19 Then I asked the second shift foreman.  
20 He said, yes, it's been down, you know,  
21 and I did write a note to your third

1 shift foreman and, you know, the foreman  
2 never came up to me and said, Chris, I'm  
3 sorry, I apologize, the machine was  
4 broken down, never said nothing. This  
5 machine could have killed me, I mean the  
6 parts in there weigh at least about a  
7 pound and they were spitting out. He  
8 knew it, but, you know, that was just  
9 another incident. Any machine I was  
10 running, he would do that. He would put  
11 me on machines that were broke down and  
12 then when it breaks down, he'll say, hey,  
13 you know, you broke the machine, but the  
14 machine was already having problems. It  
15 wasn't my fault.

16 Q Did you ever personally hear any racial  
17 slurs?

18 A Not to my face, not to my face. Only  
19 thing I heard --

20 MS. PETERSEN: I'm going to  
21 object if he's going to have

1 hearsay.

2 THE WITNESS: The only thing --

3 THE JUDGE: Wait, wait. When  
4 there's an objection, you need to  
5 stop talking so I can address the  
6 objection.

7 THE WITNESS: Okay.

8 THE JUDGE: And the questioning  
9 asked you, I want you to repeat the  
10 question, are you specifically  
11 asking for firsthand knowledge of  
12 racial slurs, that means someone  
13 said something to you, not that you  
14 heard that somebody said something.

15 THE WITNESS: A guy approached  
16 me and he said --

17 THE JUDGE: Who's the guy?

18 THE WITNESS: I can't think of  
19 his name.

20 THE JUDGE: Was he a co-employee  
21 or management?

1 THE WITNESS: He was coworker.

2 THE JUDGE: Thank you.

3 THE WITNESS: He came up to me  
4 and he said --

5 MS. PETERSEN: I'm still going  
6 to object then.

7 THE JUDGE: Sustained, hearsay.  
8 You can't tell us what somebody  
9 else said.

10 THE WITNESS: No, I'm about to  
11 finish it.

12 THE JUDGE: Yes, but if you said  
13 a guy came up to me and said that  
14 would be hearsay. You can't tell  
15 me what he said to you.

16 THE WITNESS: I can't tell you  
17 what he said to me?

18 THE JUDGE: No, not unless you  
19 know his name.

20 THE WITNESS: I don't know.

21 BY MR. JOHNSON:

1 Q Were there any other incidents that you  
2 felt were discriminatory against  
3 yourself?

4 A Yes. Wow, I mean you could be having a  
5 conversation with an individual and  
6 they'll say things like, Chris --

7 MS. PETERSEN: I'm going to  
8 object. This is hearsay as well.

9 THE JUDGE: Sustained. You  
10 can't tell us what other people  
11 said unless you can identify who  
12 they are because the other side  
13 wouldn't have an opportunity to  
14 cross-examine or call that  
15 individual as a witness to verify  
16 your testimony.

17 THE WITNESS: Well, it's just  
18 really hard --

19 THE JUDGE: I understand, but  
20 those are the rules.

21 THE WITNESS: It's so long ago.

1 THE JUDGE: I don't blame you.  
2 Those are the rules and I have to  
3 sustain the objection so you can't  
4 say anything.

5 THE WITNESS: There were stares,  
6 you could be doing your job, and  
7 people that didn't even have no  
8 business in your area, was hawking  
9 over you, you know, just like I'm  
10 doing with you right now, making  
11 you feel very uncomfortable because  
12 it's like, well, you know, what did  
13 I do wrong. Am I doing something  
14 wrong? No, it's nothing. I just  
15 want to stare at you. Now, these  
16 are not set-up guys or anything  
17 like that, just regular coworkers.

18 BY MR. JOHNSON:

19 Q Are these your coworkers?

20 A These are just regular coworkers.

21 Q Did you ever make any complaints to any

1 supervisors?

2 A Oh, yes, several times.

3 Q Do you recall what supervisors you made  
4 the complaints to?

5 A No, just the hiring manager and the tool  
6 shop, that's all.

7 Q Do you recall what the specific  
8 complaints were that you made to them?

9 A Mostly was I'm asking for help, I'm not  
10 getting it, you know, they're trying to  
11 blame that I'm tearing up the machines  
12 when the machines are already tore up.  
13 Some of the set-up guys refused to do  
14 anything for me, you know, even though  
15 I'm asking for help, they didn't want to  
16 give me no information, no nothing.

17 Q What is a set-up guy?

18 A A set-up guy is basically just a guy who  
19 comes in and sets up the machine. If  
20 it's a problem that you can't handle,  
21 they come in and fix it for you. If it



1 goes past your job call, they come in and  
2 do like maintenance work, things like  
3 that.

4 Q Set-up would be, could you describe to me  
5 what set-up means? Are you setting up  
6 the machine to run it?

7 A To run it, for example, like you have a  
8 machine that's down, it's not working no  
9 more, it's not my qualifications to fix  
10 this. I got to get somebody else on a  
11 higher level than me to come in. It's  
12 almost like a supervisor comes in and he  
13 repairs it. When he would repair it, I  
14 mean, you know, a couple times it would  
15 break down again, you know.

16 Q Any other complaints you made to your  
17 supervisors?

18 A The only complaint was basically the one  
19 about when it was time for them to do my  
20 review and different incidents that came  
21 up, I mean it was like several incidents

1 as far as the machine not working right  
2 and blaming it on me, the different  
3 stares, the insults, things like that  
4 coming from foreman and the set-up guy  
5 and different coworkers.

6 Q When you made these complaints to your  
7 supervisors, was anything done to address  
8 your concerns?

9 A Well, they were apologetic, they  
10 apologized, the manager, I remember he  
11 was saying, he was very --

12 MS. PETERSEN: I'm going to  
13 object unless he identifies who  
14 this is.

15 THE JUDGE: Do you remember the  
16 names of anybody?

17 THE WITNESS: No, I don't. I  
18 put those people in the back of my  
19 mind.

20 THE JUDGE: Objection sustained.

21 MR. JOHNSON: Thank you.

1 BY MR. JOHNSON:

2 Q Your testimony is you worked at PHB from  
3 approximately June through September of  
4 2000?

5 A Right.

6 Q What was your reason for leaving?

7 A The hassle, I mean I felt uncomfortable,  
8 I mean, you know, you felt like, you  
9 know, something bad is going to happen to  
10 you and these people don't care. I felt  
11 unsafe, I started looking for another  
12 job, and I got out of there.

13 Q When you say you felt unsafe or  
14 uncomfortable, what was your basis for  
15 feeling that way?

16 A Well, I mean, you know, talking to the  
17 foreman and asking for help and not  
18 getting it, complaining about different  
19 things that were going on, the stares,  
20 the comments, you know, I'm here to do a  
21 job. The only thing I care about is I can

1 do this job, make my money, and go home.

2 I don't need the outside things. I don't

3 care what color your son-in-law is. So

4 what, we're the same color. I don't care

5 about that. I'm just here to do a job.

6 The stares, I mean from people that

7 didn't have any business in my area, from

8 coworkers, you know, not getting

9 information that I needed to do my job

10 the right way.

11 Q Were there any other black employees  
12 working at the same time you were?

13 A Not on third shift, no.

14 Q So you were the only black employee?

15 A Black machine operator at the time, yes.

16 Q And do you feel that you were treated  
17 differently than your coworkers?

18 A Oh, yes, I do.

19 Q What were the reasons for that?

20 A Well, like I said, anytime you needed  
21 help, there was no help. You felt like

1           you were by yourself, like, okay, we're  
2           not going to give him no help, we're  
3           going to watch him fail so we have a  
4           reason to get rid of him, that's how I  
5           felt and that's how it was. You felt  
6           like you were lost and by yourself there.

7                   MR. JOHNSON: That's all the  
8                   questions I have.

9                   THE JUDGE: Cross-examination.

10                           \* \* \*

11                           **CROSS-EXAMINATION**

12           BY MS. PETERSEN:

13           Q           Mr. McCullum, what division did you work  
14                       at at PHB?

15           A           The tool division.

16           Q           Where is that in relation to the die cast  
17                       division?

18           A           I believe that's like almost, I want to  
19                       say blocks, but it looks like fields  
20                       between areas.

21           Q           So it's an entirely separate area?

1 A Yes.

2 Q And during the time you worked at PHB,  
3 you never had occasion to go to the die  
4 cast division?

5 A No.

6 Q So you didn't ever meet with Mr. Woodard  
7 before today?

8 A No, no.

9 Q And you never saw him working?

10 A No, no, no.

11 Q You never saw any of his supervisors or  
12 coworkers --

13 A No, no.

14 Q -- talking with him or anything like  
15 that?

16 A Hmm-um.

17 MS. PETERSEN: Judge, I'm just  
18 going to object to Mr. McCullum's  
19 testimony in his entirety. I don't  
20 think it has any relevance on what  
21 Mr. Woodard has testified to. I

1 don't think it has any basis for  
2 abnormal working conditions that's  
3 specific to Mr. Woodard.

4 THE JUDGE: At this time, I'm  
5 going to overrule your objection.

6 MS. PETERSEN: Okay.

7 THE JUDGE: I'll let you brief  
8 it.

9 BY MS. PETERSEN:

10 Q Now, you said you don't remember any of  
11 your supervisors or coworkers that had  
12 made these comments to you?

13 A No.

14 Q You were there for approximately three  
15 months?

16 A Yes, a little bit more, a couple days  
17 more.

18 Q Were you a member of the union when you  
19 were there?

20 A No.

21 Q So you didn't make any complaints to the

1 union?

2 A Hmm-um.

3 Q Was that because you were within your  
4 trial period?

5 A Yes.

6 Q You left before the end of the trial  
7 period?

8 A Right, right, um-hmm.

9 Q What happens during the trial period?

10 A Well --

11 Q For you.

12 A -- for me, it's like they test you to  
13 make sure you can do the job, you know,  
14 and from what the manager -- according to  
15 the manager, less than 30 days, if you're  
16 doing terrible in 30 days, you're out.  
17 This went on, you know, I was there for  
18 the whole 90.

19 Q So that 90 days is the trial period?

20 A Yes.

21 Q During this period, you can be terminated



1 for whatever reason?

2 A Right.

3 Q And after that is when you go through the  
4 union and have a grievance process and  
5 everything?

6 A Right.

7 Q And did you just work third shift at the  
8 time you were there?

9 A Third shift.

10 Q What hours of the day was that?

11 A From 11:00 to 7:00.

12 Q 11:00 p.m. to 7:00 a.m.?

13 A Yes.

14 Q And how many days a week?

15 A Five, Monday through Friday.

16 Q So you're full-time?

17 A Well, starts Monday night.

18 Q Sunday night to Thursday night?

19 A Yes.

20 Q You don't remember your set-up guys or  
21 anything like that?

1 A No, hmm-um.

2 Q Do the people in the division that you  
3 worked, the tool division, I guess?

4 A Right.

5 Q Are they union members or is this a non-  
6 union area?

7 A I wouldn't even remember.

8 Q Did anybody ever make physical threats  
9 against you?

10 A No.

11 Q Did you ever see any racist remarks in  
12 the restrooms there when you were there?

13 A No.

14 MS. PETERSEN: All right, that's  
15 all I have. Thank you, Mr.  
16 McCullum.

17 THE JUDGE: Follow-up?

18 MR. JOHNSON: Just a few  
19 questions, your Honor.

20 \* \* \*

21 REDIRECT EXAMINATION

1 BY MR. JOHNSON:

2 Q Mr. McCullum, you were in the tool  
3 division?

4 A Right, right, right.

5 Q And if you know, is the tool division and  
6 the die cast division both divisions of  
7 the same company?

8 A Yes.

9 Q And are they located in the same general  
10 area? Let me ask you, there's separate  
11 buildings?

12 A Yes.

13 Q Are they located on the same street?

14 A Yes.

15 Q The same property?

16 A Yes.

17 Q Now, you talked about probationary  
18 periods?

19 A Um-hmm.

20 Q And I think you testified that there was  
21 a 90-day period?

1 A Right, right, right.

2 Q Now, you were also talking about a 30-day  
3 period, but I don't think you finished  
4 what you were saying.

5 A Well, the manager, the big thing after  
6 was after the 90-day probation, the  
7 foreman, he ran down a list of things, he  
8 said I was making the other employees  
9 uncomfortable, I was doing this, I wasn't  
10 doing the job right, wasn't making rate,  
11 I was just horrible, and the manager  
12 looked at him, well, if you're having all  
13 these problems with Chris, why didn't you  
14 let him know and he said, the foreman  
15 said --

16 MS. PETERSEN: I'm going to  
17 object to what the foreman said.

18 THE JUDGE: I'm going to allow  
19 it. Go ahead.

20 THE WITNESS: The foreman said  
21 he should have known he was going

1 to get fired after the 90 days and  
2 I'm like, wait a minute, I thought  
3 I was doing good because nobody  
4 never complained about me and the  
5 manager, his response was, the 30  
6 days, if you wasn't productive,  
7 wasn't doing what you were supposed  
8 to in 30 days, he should have fired  
9 you right then. He should have  
10 told you something. Waiting for  
11 this 90-day period and that you  
12 were a bad employee, you should  
13 have --

14 BY MR. JOHNSON:

15 Q Just so I'm clear, you worked from June  
16 to September of 2000?

17 A Um-hmm.

18 Q Was it more than 90 days or less than 90  
19 days?

20 A It was a little bit more than 90 days  
21 when I left, but --

1 Q Had you completed your probationary  
2 period?

3 A Yes.

4 Q Had they told you that you had completed  
5 your probationary period?

6 A Yes, and the thing about it, if I hadn't  
7 had that meeting with them about the  
8 treatment that I was getting, they  
9 probably would have fired me if I hadn't  
10 spoke up.

11 Q Did you have a meeting at the end of your  
12 probationary period?

13 A Yes, as a matter of fact, this was the  
14 day after that it happened because the  
15 manager, the foreman, he would bring you  
16 in and tell you the different things, you  
17 know, give you a list of the problems he  
18 has with you and after he gave me this  
19 list and told me what he thought, I was,  
20 like, no, hmm-um, that ain't how it went  
21 down. I don't appreciate this. I'm

1           going to the manager and that's when we  
2           had the big meeting and in the meeting,  
3           it was a set-up guy, the foreman, and  
4           also the hiring manager, and myself.

5           Q       But that was at the end or the completion  
6           of your 90-day probationary period?

7           A       Right.

8           Q       And you were not terminated?

9           A       No, no, because after the manager heard  
10          the different things, he was more upset  
11          with the foreman and he apologized to me.  
12          He says, is there any problems, Chris?  
13          Do you want something done? I just  
14          wanted a job, you know, and I wanted to  
15          be treated equal.

16          Q       And shortly after, you left your  
17          employment with PHB?

18          A       Um-hmm.

19          Q       Is that correct?

20          A       Yes. Probably two, three weeks after, I  
21          ended up getting hired from another job.

1 Q You weren't fired, you quit your job?

2 A I quit.

3 MR. JOHNSON: That's all the  
4 questions I have, your Honor.

5 \* \* \*

6 **RECROSS-EXAMINATION**

7 BY MS. PETERSEN:

8 Q Mr. McCullum, just to clarify, the people  
9 that worked in the tool division are  
10 entirely different people than work in  
11 the die cast division; correct?

12 A Yes.

13 Q People don't intermingle?

14 A Merge, no.

15 Q So you would have completely different  
16 supervisors, coworkers, set-up guys, than  
17 people in the die cast division?

18 A Correct.

19 MS. PETERSEN: That's all I  
20 have.

21 THE JUDGE: Thank you, Mr.



1 McCullum. You may step down.

2 You're free to leave.

3 THE WITNESS: All right.

4 THE JUDGE: Next witness,  
5 Attorney Johnson?

6 MR. JOHNSON: Your Honor, that  
7 is the only witness I have. I had  
8 subpoenaed Kerry Goodwine, who was  
9 going to be my other witness. I  
10 received a phone call two days ago  
11 from Attorney Jeff Connelly, who  
12 represents Mr. Goodwine in a  
13 discrimination suit. Mr. Goodwine  
14 hired in the last month or so by GE  
15 and is in his probationary period  
16 where he can't miss a day of work  
17 for 90 days and he is not going to  
18 be here. I was wondering if I  
19 would be able to take his  
20 deposition to submit?

21 THE JUDGE: Any objection?

1 MS. PETERSEN: No, that's fine.

2 THE JUDGE: Then you may proceed  
3 by deposition.

4 MR. JOHNSON: Thank you, your  
5 Honor.

6 THE JUDGE: Is that going to be  
7 your only other witness?

8 MR. JOHNSON: That's my only  
9 other witness.

10 THE JUDGE: All right. Ms.  
11 Petersen, you identified several  
12 witnesses. I assume they're here  
13 today?

14 MS. PETERSEN: Yes, your Honor.

15 THE JUDGE: Call your first  
16 witness.

17 MS. PETERSEN: I would call Mr.  
18 Ronald Sayers.

19 THE JUDGE: Are all these  
20 individuals going to be testifying?

21 MS. PETERSEN: Yes.

1 THE JUDGE: I would ask that  
2 they be sequestered.

3 MS. PETERSEN: Okay.

4 THE JUDGE: Anyone who is going  
5 to testify needs to go out in the  
6 lobby and we'll call you as you're  
7 needed. The two others in the  
8 back, are they not testifying?

9 MS. PETERSEN: They are not  
10 testifying.

11 THE JUDGE: Thank you. Raise  
12 your right hand. Please have a  
13 seat and keep your voice up so the  
14 court reporter can hear you.

15 THE WITNESS: Okay.

16 THE JUDGE: Attorney Petersen.

17 \* \* \*

18 RONALD SAYERS,

19 called as a witness on behalf of the  
20 Employer, and having been previously

1                   duly sworn, was examined and testified

2                   as follows:

3                   **DIRECT EXAMINATION**

4           BY MS. PETERSEN:

5           Q       Please state your full name for the  
6                   record.

7           A       Ronald Reed Sayers.

8           Q       By whom are you employed currently?

9           A       PHB Die Cast.

10          Q       What is your title there?

11          A       I am shift supervisor.

12          Q       How long have you been shift supervisor  
13                   there?

14          A       I've been shift supervisor since 1997.

15          Q       And how long have you been employed by  
16                   PHB, total?

17          A       I'm in my twenty-eighth year at PHB.

18          Q       And are you familiar with the claimant in  
19                   this case, Mr. Dayved Woodard?

20          A       Yes, I am.

21          Q       How are you familiar with him?

1 A Just through working with him.

2 Q Were you once his supervisor?

3 A Yes, ma'am.

4 Q Were you a direct supervisor to him,  
5 meaning he reported directly to you?

6 A Yes, to my foreman and myself, yes.

7 Q Who was your foreman?

8 A I had four different foremen underneath  
9 me.

10 Q Okay, we can get to that later. Now, Mr.  
11 Woodard had, I believe, worked for PHB  
12 from 1998 to 2003; is that your  
13 understanding?

14 A Yes.

15 Q And did he work a particular shift do you  
16 recall?

17 A Mostly second shift.

18 Q What hours was that?

19 A In his classification, it would be 2:40  
20 to 10:40.

21 Q 2:40 p.m. to 10:40 p.m.?

1 A Yes.

2 Q And did you work on the same shift as Mr.  
3 Woodard?

4 A Every other week, I rotate.

5 Q Okay. How did you rotate your shift?

6 A I swing shift. One week I work first  
7 shift and one week, I work second shift.

8 Q And as the shift supervisor, what were  
9 your duties?

10 A My duties is to overlook the whole  
11 department, assign people to machines,  
12 make sure people are there, any important  
13 jobs with the machinery as far as getting  
14 them out on time, I'm in charge of  
15 anything that goes on in the whole  
16 department.

17 Q What department is that?

18 A Aluminum die cast.

19 Q How many people work in the department  
20 during one shift?

21 A During one shift.

1 Q A range.

2 A Probably between 40 and 50, all depending  
3 on how busy we are at the time.

4 Q And you supervise all those people?

5 A Yes, ma'am.

6 Q What type of work is done in that  
7 department?

8 A It's like foundry. It's molten metal,  
9 making aluminum die cast parts.

10 Q You make aluminum parts?

11 A Yes.

12 Q What types of machines are in that  
13 department?

14 A Mostly die cast machines, then there is  
15 some secondary machines in there, punch  
16 presses. Once in a while, there will be a  
17 drill press or something for secondary  
18 work.

19 Q Okay. So there's 40 to 50 people working  
20 there at one time. Does everybody have  
21 their own machine or how does that work?

1           A           No, they get moved around from machine to  
2                       machine. There's different  
3                       classifications. You're DCPOs run the  
4                       machines, I have operators that run hand  
5                       machines. The DCPOs, they start the  
6                       machines up and everything and then  
7                       they're responsible for everything in  
8                       that work cell. Then I also have a metal  
9                       man and the foreman and everything that  
10                      I'm in charge of.

11          Q           How many different machines in the same  
12                       department, in your department?

13          A           Die cast machines at that time, we had  
14                       about 30 machines.

15          Q           And do all the people in the department  
16                       work all the machines at any given time  
17                       or are certain people assigned to certain  
18                       machines?

19          A           They can run any given machine on any  
20                       given day.

21          Q           Okay. Now, can you explain the procedure



1 of how people are assigned to certain  
2 jobs, certain machines?

3 A Well, as far as the procedure, they're  
4 just assigned a machine.

5 Q When a job comes in, you get an order or  
6 if you can start from the beginning?

7 A Well, when a brand new order, it will be  
8 assigned --

9 THE JUDGE: This is not a  
10 regular work injury. Why are we  
11 going through the job duties?

12 MS. PETERSEN: Because I think  
13 he did complain about his job  
14 assignments.

15 THE JUDGE: Well, job  
16 assignments is one thing.

17 MS. PETERSEN: I wanted to go  
18 through the procedure of how people  
19 are assigned to their specific jobs  
20 because I think he had testified  
21 that he was assigned to all the

1                   difficult jobs or a lot of  
2                   difficult jobs.

3                   THE JUDGE: All right, I'll  
4                   allow it.

5       BY MS. PETERSEN:

6       Q       You can continue.

7       A       A job will come down, it will be lined  
8               up, put in a machine, then when that  
9               machine is ready to start up, anybody  
10              that's available at that time will be  
11              assigned that machine. A lot of times,  
12              if your machine finishes or whatever,  
13              because they go by priorities, we have  
14              the fourth job and it goes right down the  
15              list, and if your job finishes or is up  
16              on the priority list, when that machine  
17              starts up, then you'll be moved to that  
18              machine.

19      Q       Okay. So if you are working on a certain  
20               machine and it was lower on the priority  
21               list and then what if somebody calls off

1           that has a higher job on the priority  
2           list, then what happens?

3           A       What happens then is if somebody calls  
4                   off and they're on a more important job,  
5                   then we'll look at the list and go to the  
6                   least priority machine and move that  
7                   individual to fill the higher priority  
8                   machine.

9           Q       Does it matter who the individual is?

10          A       Absolutely not.

11          Q       It's the priority, you said?

12          A       Priority machine, right.

13          Q       Now, are you given deadlines to complete  
14                   the jobs then?

15          A       Well, there's a deadline when we start  
16                   running the job, then however long it  
17                   takes to finish that job unless something  
18                   else more important comes up and we have  
19                   to take it out.

20          Q       Okay. Now, you said you were responsible  
21                   for assigning jobs to employees and

1 machines to employees?

2 A Yes.

3 Q Were you the only one that was  
4 responsible for assigning jobs or anybody  
5 else?

6 A No, there's shift supervisors on the  
7 other shift. Like I rotate, I have a  
8 partner that's on the opposite shift of  
9 me, he's on second and vice versa. He  
10 assigns jobs, also. Then we have three  
11 dispatchers that are taken care of  
12 anything that has to do with people in  
13 that department as far as moving them  
14 around or when people call off, they get  
15 a hold of one of us and we'll switch  
16 people around and at times, they'll move  
17 people around a little bit, too.

18 Q How are the assignment decisions made?  
19 Is it random or is there a certain --

20 A No, mostly it is random, because like I  
21 said, it goes by the priority sheet or if

1           when one job finishes, they'll just  
2           automatically take that individual and  
3           put him on the next machine that's open.

4           Q       Were the assignments documented?

5           A       No.

6           Q       Now, if an employee is assigned to a  
7           certain job on a machine, does the  
8           employee work at that certain job until  
9           it's completed?

10          A       No, not necessarily. Sometimes that  
11          machine could break down, then it will go  
12          to get assigned another job and sometimes  
13          they're on that job for a couple days or  
14          they could be moved around.

15          Q       Okay. Now, for the time you work at the  
16          shop, were you physically in your  
17          department among the people that work  
18          there with the machines and everything?

19          A       Yes.

20          Q       Okay. And did you observe the people as  
21          they worked there?

1 A Sure.

2 Q Now, with respect to Mr. Woodard, were  
3 you observing his work as well?

4 A Oh, sure.

5 Q Now, when Mr. Woodard first started  
6 working at PHB back in 1998, did he work  
7 under a certain trial period?

8 A Yes, everybody that starts, they go  
9 through the regular union procedures,  
10 it's either 60 or 90 days.

11 Q Okay. What's the purpose of the trial  
12 period?

13 A Well, to get them broke in, taught, and  
14 everything, to make sure everything goes  
15 okay as far as making sure they come to  
16 work every day and do good work.

17 Q Now, do you observe employees during  
18 their trial period?

19 A Sure.

20 Q So do you have any input as to whether an  
21 employee stays on as an employee or

1                   whether they're hired or fired?

2           A           Well, usually when the individual gets  
3                   hired and that, they go through a break-  
4                   in period, a training period, that's what  
5                   that whole 90 days is. Then they get  
6                   evaluated on an evaluation sheet, the  
7                   foreman they have at the time, because  
8                   there's three or four foremen out there,  
9                   and they get evaluated by them.

10          Q           Now, in general, what do you expect of  
11                   the employees that work in your  
12                   department?

13          A           Just to show up to work on time, to  
14                   follow the methods and do the proper work  
15                   that the job needs to be done, staying at  
16                   the machine and just do a good, fair  
17                   day's work.

18          Q           Did you have the same expectations for  
19                   Mr. Woodard when he worked there?

20          A           Sure.

21          Q           Were your expectations for Mr. Woodard

1 different than any of your other  
2 employees?

3 A No.

4 Q Now, initially after Mr. Woodard started  
5 working at PHB, do you remember whether  
6 he was meeting your expectations  
7 initially?

8 A Dayved was a fair individual, he did  
9 pretty -- fair work. There's times where  
10 we had to talk to him when he wasn't  
11 staying at his machine or doing a few  
12 things he wasn't supposed to be doing.

13 Q Did his work performance ever change  
14 during the time he worked there or did he  
15 continue to meet these expectations?

16 A Yes, he did fair work.

17 Q Now, you said he would leave his machine  
18 or were there problems with this work  
19 performance at all?

20 A Yes, there's times when he would leave  
21 his machine and go talk to other people,



1 leave his machines running or do various  
2 other things.

3 Q What's wrong with that?

4 A Well, the machines is not -- the machines  
5 they run, they're automatic machines and  
6 everything. There may be a machine that's  
7 still running, there's something that  
8 could go wrong or there's some safety  
9 problems to other individuals around the  
10 area.

11 Q Do you know how long he would leave his  
12 machine?

13 A Not exactly, no.

14 Q Was it for a minute, two minutes, or --

15 A It could be any of that.

16 Q And you don't think that was appropriate?

17 A No, I mean they're allowed to go down get  
18 a drink, stuff like that, but basically  
19 if you leave for a while, it's going to  
20 be a problem.

21 Q What's a while?

1 A Well, I don't have any time limit on it.

2 Q 15 minutes, is that too long?

3 A Oh, 15 minutes, is, without getting  
4 relief, because we have relief people  
5 that when they do have to go to the  
6 bathroom or something like that, then we  
7 ask for that and we'll get a relief, set  
8 up relief person comes over and runs the  
9 machine for them while they go for a  
10 bathroom break or whatever they have to  
11 do.

12 Q Now, if an employee wants to go on a  
13 break, do they go get the relief person?

14 A They tell the foreman or else call  
15 myself.

16 Q Okay. And the foreman or yourself would  
17 assign the relief person to that machine?

18 A Yes.

19 Q So that would happen when a person would  
20 go to lunch as well; right?

21 A At lunchtime, if we didn't keep that

1 machine running, we would tell him to  
2 shut it off at a certain period of time,  
3 they would shut their machine down, go to  
4 lunch, and when they come back, they  
5 would start back up.

6 Q Okay. Other than Mr. Woodard leaving his  
7 machine for probably longer than you'd  
8 like him to, did he have any other  
9 problems with his work performance or  
10 attitude or anything like that?

11 A No.

12 Q Okay. Now, these issues you had with his  
13 leaving the machine, did you tell him  
14 about it?

15 A Yes.

16 Q And how did he react?

17 A He seemed fine at the time. There was a  
18 couple different times where I just told  
19 him, hey, this is the kind of stuff you  
20 can't do. It's going to cause you  
21 problems. You have to stay at the

1 machine, keep the machine running.

2 Q Would you have to do this many times or  
3 how often would you have to remind him?

4 A Just a couple times I talked to him one-  
5 on-one about it.

6 Q Two times?

7 A Two times I remember, yes.

8 Q What happened during these one-on-one  
9 talks you had with him? You said you had  
10 two times where you --

11 A Right, well, one time at the beginning of  
12 the shift, periodically during the shift,  
13 I'll go around and check the castings,  
14 look at them, see if there's anything  
15 wrong with them or whatever, and the one  
16 time I walked by and there wasn't an  
17 operator, so I looked at the casting and  
18 there still wasn't an operator there, so  
19 I checked my sheet that came with me of  
20 the assignments, who's running that  
21 machine and Dayved was on this machine

1 and it was a thousand ton one at the time  
2 and I started looking around for him, I  
3 started walking down to use the one phone  
4 and Dayved come around the corner then  
5 and I asked him where he was and he said  
6 he was over talking to Jamal Shields.

7 Q Okay. And then what did you say to him?

8 A Well, that's one of the occasions that I  
9 told him, well, okay, we can't be doing  
10 this, we got to stay at the machine  
11 because Jamal was over on the side of the  
12 department running another machine, which  
13 is quite a ways away and you can't leave  
14 that machine running, I don't know how  
15 long he was gone, but I was there for a  
16 couple, three minutes anyhow, and he was  
17 gone, you know, quite a while, I don't  
18 know how long he was gone, but I said  
19 this is the kind of thing that can cause  
20 trouble, you know, safety problems or  
21 whatever if something goes wrong with

1           that machine.

2           Q       Did you have any other people in your  
3                   department that had these types of  
4                   problems or issues of leaving their  
5                   machine longer than you'd like them to?

6           A       Yes, I've had problems with other people,  
7                   too.

8           Q       And would you do the same thing to them?

9           A       Oh, absolutely.

10          Q       You approach and remind them not to or  
11                   what would you --

12          A       Yes, I would approach them, talk to them  
13                   about staying at the machines and not  
14                   leaving for a long period of time.

15          Q       Now, Mr. Sayers, did you have any  
16                   personal problems with Mr. Woodard?

17          A       No.

18          Q       Did you have any problem with him being  
19                   African-American or black?

20          A       Absolutely not.

21          Q       In general, do you have any problems with

1 people who are black or members of a  
2 minority?

3 A No, ma'am.

4 Q Now, during the time that Mr. Woodard  
5 worked at PHB and under your supervision,  
6 did you ever deliberately try to give him  
7 a hard time or make his employment  
8 difficult at PHB?

9 A No.

10 Q Did you ever single him out or target him  
11 or harass him, make life difficult for  
12 him when he worked there?

13 A No. All I really care about out of any  
14 individual there is what kind of work  
15 they do at the machine, just to do the  
16 eight hours worth of work that they are  
17 hired to do.

18 Q So the contacts you've made to Mr.  
19 Woodard that you described were because  
20 you wanted him to have a better  
21 performance?

1           A           Correct, you know, staying at the  
2                       machine, keeping your machine running,  
3                       because there's different things can  
4                       happen just not safety problems, but  
5                       sometimes if you're not watching what you  
6                       were doing, you're going to have damages  
7                       to the machine, breakage or whatever and  
8                       making scrap parts.

9           Q           Did you ever make any derogatory or  
10                      racist comments to or about Mr. Woodard?

11          A           No, ma'am.

12          Q           Did you ever hear any of Mr. Woodard's  
13                      other supervisors or coworkers make any  
14                      racist or derogatory comments to or about  
15                      him?

16          A           No, ma'am.

17          Q           Did Mr. Woodard ever complain to you  
18                      directly about being treated unfairly by  
19                      his supervisors or coworkers?

20          A           Just about me treating him unfairly.

21          Q           He told you?



1 A Well, the told the union --

2 Q Telling you directly?

3 A No.

4 Q Did he ever complain to you about any  
5 coworkers or supervisors making racist or  
6 derogatory comments?

7 A No.

8 Q Now, do you personally think there was a  
9 problem in the shop with racism?

10 A No.

11 MR. JOHNSON: Objection,  
12 speculation.

13 THE JUDGE: Sustained.

14 MS. PETERSEN: From his own  
15 experience.

16 THE JUDGE: Sustained.

17 BY MS. PETERSEN:

18 Q Now, at a prior hearing, Mr. Woodward  
19 testified that during his trial period,  
20 he was asked by one of his supervisors,  
21 Rex Ryan, to work overtime over a

1 weekend, I believe, and then when he  
2 showed up, you were the supervisor at the  
3 time and you told him to go home. Do you  
4 recall something like that?

5 A No, ma'am, I don't. Normal procedure if  
6 we do do that, if somebody isn't on the  
7 schedule, in case there might be a  
8 mistake, we usually just find something  
9 for that individual to do.

10 Q Okay. So if he had showed up, you're  
11 saying you wouldn't have sent him home?

12 A No.

13 Q Is it possible you could have sent him  
14 home?

15 A I don't recall.

16 Q Now, during this trial period, did you  
17 have any personal problems with Mr.  
18 Woodard?

19 A Personal problems, no.

20 Q If he had been sent home by yourself  
21 during his trial period, did you try to

1           make life difficult for him after that  
2           time?

3           A       No.

4           Q       Now, Mr. Woodard also testified that you  
5           were constantly putting him on more  
6           difficult jobs. Is that true?

7           A       No.

8           Q       How so?

9           A       At that time period, we were moving  
10          people around on a regular basis to try  
11          to keep -- because we had some jobs that  
12          were a little harder, so we were moving  
13          people around. Rex Ryan, myself, which  
14          Rex is my partner on the other shift that  
15          we swing with, we came up with a program  
16          where every Wednesday, we would move  
17          people around, you know, so that way they  
18          would only have to -- they weren't  
19          running the same job for more than three  
20          days. If we put them on a job on a  
21          Wednesday, they would run that job, if it

1           was running, Wednesday, Thursday, Friday,  
2           and then they'd have the weekend off  
3           unless they worked, of course, then  
4           they'd have to run the same job Monday  
5           and Tuesday and then that Wednesday,  
6           they'd get moved to something else.

7           Q       So a person wouldn't be assigned to the  
8           same job for three weeks?

9           A       No.

10          Q       At a time?

11          A       Shouldn't be, no.

12          Q       Shouldn't. Is it possible?

13          A       When we came up with this program, then  
14                  no, they wouldn't be running the same job  
15                  for that long.

16          Q       Okay. You said there may be harder jobs  
17                  or jobs that are perceived as more  
18                  difficult or harder than other jobs?

19          A       Some are, yes.

20          Q       What types of jobs would they be?

21          A       Well, they could be various different

1 kind of jobs, could be a little heavier  
2 job or could be a quicker running job.  
3 One person might complain about one job  
4 that another person likes.

5 Q Well, did you ever set out to  
6 specifically assign the heavier or more  
7 difficult jobs to Mr. Woodard?

8 A No.

9 Q Now, you indicated there are some jobs  
10 that people like and other people  
11 wouldn't like?

12 A Yes.

13 Q Now, in Mr. Woodard's case, are you aware  
14 of jobs he liked to do, but others didn't  
15 like to do?

16 A One job that he did like to run was the  
17 -- the customer was called Rex Roth and  
18 he seemed to like to run that job, yes.

19 Q Now, conversely, were there jobs that he  
20 didn't like to do, but others didn't mind  
21 doing?

1 A Not right off the top of my head.

2 Q Okay. Now, did Mr. Woodard ever make  
3 complaints to you directly about his job  
4 assignments?

5 A Just through the union.

6 Q He didn't approach you directly?

7 A Well, when he went through the union and  
8 we had a meeting one time and tried to  
9 discuss all this, yes.

10 Q We'll get to that. Well, actually why  
11 don't we discuss that now. You said that  
12 he had approached -- he went through the  
13 union about your job assignments?

14 A Yes.

15 Q Can you tell me what happened there?

16 A Well, he went to -- well, actually he  
17 went to my one boss and complained about  
18 me, which I was kind of surprised. I  
19 heard that he had a problem with a  
20 supervisor, but I didn't think it was me.  
21 The next day after, my boss at the time,

1           which was Butch Smith, told me that the  
2           problem was with me and he wanted to know  
3           what was going on. I was kind of  
4           surprised because I always thought I  
5           treated Dayved okay and everything, but  
6           so I went to -- I asked Butch Smith if I  
7           could have a meeting with Dayved and  
8           everything and I said I'll get the union  
9           involved and everything. So at that time,  
10          I talked to the union president, which  
11          was Greg Biebel (phonetic) and the union  
12          steward on that shift, which was Pat  
13          Camp, and we had a meeting, had it in my  
14          office, the three union individuals and  
15          myself and we talked about that.

16          Q       How were his complaints addressed? He  
17                   said he wasn't happy with his job  
18                   assignment.

19          A       His job assignments, he said he didn't  
20                   have a problem running anything out in  
21                   the shop, but he felt that I was treating

1           him unfairly and was assigning harder  
2           jobs just to him.

3           Q       Okay, and how was that complaint  
4           addressed then?

5           A       Well, I didn't think that I did, but I  
6           said, well, maybe I'm, you know, let me  
7           look it up, so I printed out what he had  
8           run for about five or six prior, you  
9           know, I could bring that up on the  
10          computer and I printed it right out and  
11          we looked at that and the union steward  
12          and the president and everything, I said  
13          it seems to be a pretty good mixture of  
14          machines and jobs that he ran and  
15          everything.

16          Q       Did you ever compare his work with  
17          anybody else's?

18          A       Yes, that's what he was saying that some  
19          other people always got easier jobs all  
20          the time, so I had asked him, well, tell  
21          me who, I'll print them up and we'll



1 compare them and he said, no, he didn't  
2 want to do that, he didn't want to bring  
3 anybody else's name into it and stuff and  
4 I said, well, that's your only way I can  
5 see if I make a mistake or maybe there is  
6 something wrong here, we just need to  
7 take a look at it and he still declined,  
8 he didn't want to bring anybody else in  
9 on that, so I looked at the union steward  
10 and I said, well, Pat, give me a name,  
11 anybody and he gave me a name, I don't  
12 remember who it was at the time, so I  
13 printed that up, looked that up, printed  
14 it out and they were pretty close  
15 assortment of jobs that both of them ran.

16 Q Close assortment, you mean hard jobs,  
17 easy jobs?

18 A Right, the variety was pretty similar.

19 Q Do you remember if the other person was  
20 white?

21 A Yes, probably.

1 Q Now, was there an occasion when you had  
2 walked by Mr. Woodward and Jamal Shields  
3 at the computer and you said to Mr.  
4 Shields, I'll take care of you? What  
5 happened?

6 A Yes, I did say that. I don't remember  
7 where it was at, if it was at the  
8 computer or whatever, but I don't think  
9 Dayved was there very long at the time.  
10 I was just getting to know him and talk  
11 to him a little bit, same thing with  
12 Jamal, I talked to him quite a bit. You  
13 know, there's lighter times of the day  
14 where you like to keep it lighter, get to  
15 know your individuals a little bit and  
16 have a little bit and have a little fun  
17 or kid around a little bit and they were  
18 talking about the jobs that they were on  
19 and Dayved said he was on a harder job  
20 and Jamal said he was on a little lighter  
21 job and I just -- that's what I said,

1           yes, I take care of you, Jamal, you know,  
2           I was funning around. I didn't know it  
3           was a serious matter at the time.

4           Q       You didn't mean to be malicious or --

5           A       Oh, no, no, and this was before I found  
6           out that there was a problem between --  
7           that Dayved had a problem or thought I  
8           had a problem with him.

9           Q       So you said it just the way you said it  
10          today, sort of light-hearted?

11          A       Yes, that's exactly what it was, you  
12          know, you keep things on a lighter side  
13          if you can. You want to get to know your  
14          individuals and their personalities and  
15          everything.

16          Q       Did you ever hear Mr. Shields say, wow,  
17          Dayved, they're really hitting you hard  
18          after this conversation?

19          A       I don't recall that, no.

20          Q       Now, speaking of Mr. Shields, do you know  
21          where in the shop he worked?



1 people to go to lunch too early because  
2 they have to shut the machines down if  
3 they're not getting relieved, so we don't  
4 want them there before a few minutes  
5 before lunchtime and I walked by the  
6 lunchroom and it was probably somewhere,  
7 five, ten minutes before lunchtime. Like  
8 I said, there was a half a dozen people  
9 standing there and I noticed there's  
10 three or four microwaves already heating  
11 up lunches and that and I said, hey,  
12 guys, why don't you, you know, sometimes  
13 you -- I'm a little sarcastic in trying  
14 to get guys to think about what they're  
15 doing.

16 Q What do you mean, what were they doing,  
17 going to lunch too early?

18 A Oh, yeah, they were way too early. Their  
19 lunches were already in the microwaves  
20 heating up and I said, hey, why don't you  
21 just warm up my lunch, too, you know,

1           being a little sarcastic.

2           Q       Again, this is light-hearted or fun, just

3           --

4           A       Just to get a point across, yes.

5           Q       Did you direct our comment to Mr. Woodard  
6           specifically?

7           A       Not specifically, no. How could you do  
8           that when there's other guys standing in  
9           there and there's two or three microwaves  
10          going?

11          Q       Okay. Now, he also testified that there  
12          was an incident where he was on light  
13          duty in process control, he was picking  
14          up parts, and I guess you had asked where  
15          he was and then you subsequently  
16          following him around with a stool. Do you  
17          remember something like that?

18          A       Yes, I remember something like that, but,  
19          no, I did not follow him around with a  
20          stool.

21          Q       What happened?

1 A He was on light duty for either, I can't  
2 remember if it was either a knee or ankle  
3 injury. He was doing -- helping out  
4 process control. Process control takes  
5 care of all the procedures on how the  
6 parts run and do x-rays and various jobs.  
7 So what Dayved was assigned, he would go  
8 around twice a day, once at the beginning  
9 of the day and once after lunch, with a  
10 cart and they have an assigned sheet on  
11 certain jobs that are x-ray jobs, that  
12 process actually x-rays these jobs to see  
13 how solid they are. So he'll go around  
14 and pick up these castings and put them  
15 on the cart and bring them into process  
16 control, probably average right around  
17 ten or 12 machines that you have to do  
18 that for and he'll put them in the x-ray  
19 room, and then they'll do the x-rays on  
20 it after that. Then there's the Rex Roth  
21 jobs, when they're running, they have to

1           be cut up or sectioned on a jigsaw so  
2           they're also -- he would also do that or  
3           whoever we have would do that. So that  
4           usually took an hour, maybe two hours at  
5           most to do that and then after that,  
6           Dayved was always disappeared, you know,  
7           he wasn't around. So the one day, I paged  
8           him a couple times and there wasn't any  
9           answer and once he did come around, I  
10          asked him where he was. He said he was  
11          in the bathroom doing some other stuff.  
12          That was after lunch that day. So I  
13          said, well, tomorrow, when you come in  
14          and do this, when you're done doing the  
15          process end of it, I want you to give me  
16          a call so we can find you something else  
17          to do. Then the next day, I checked with  
18          the nurse to see exactly what his  
19          restrictions were on what he can do and  
20          what he can't do, so I could find  
21          something to assign him. At that time,



1 all these restrictions he had, he was  
2 supposed to be able to sit down when he  
3 needed to to take relief off his knee or  
4 ankle. So the next day or that same day  
5 when he called me, said he was all done,  
6 I said, okay, I took him out by six  
7 hundred three, which is a machine right  
8 next to where he was working the process,  
9 took him out in between right there and  
10 said, okay, get your broom, we can just  
11 sweep this up. He said, well, I can't  
12 stand that long, I can't do this because  
13 I have to stand, I'm supposed to be able  
14 to sit and that and that's when I pointed  
15 to a stool because most of the machines  
16 have a stool. I said, well, right  
17 there's a stool, when you need to sit  
18 down, sit down and take a break. When  
19 you get this area done, just move on to  
20 the next machine.

21 Q You didn't follow him around with the

1 stool?

2 A No, ma'am.

3 Q From place to place?

4 A No.

5 Q Were you with him the whole time as he  
6 worked and followed him?

7 A No, I got a very big department to run.  
8 Like I said, there's almost 50 people at  
9 times and when I make my rounds, I check  
10 up on him, see how he's doing.

11 Q When you were checking up on him and were  
12 you doing this to harass him or give him  
13 a hard time?

14 A No, that's my job. I check on all the  
15 guys as I walk around. I always see what  
16 they're doing.

17 Q Did you have any type of confrontation  
18 with Mr. Woodard as a result of this  
19 incident or as a result of the stool and  
20 telling him where to work, anything like  
21 that, do you recall, a face-to-face

1 confrontation?

2 A Yes, it was probably a couple -- a week  
3 or so after that, we had a little  
4 confrontation when I took him to an area  
5 when he was done doing the process  
6 control, I took him down to 1600 ton two,  
7 because there's an area down there, that  
8 machine was done running and there was a  
9 bunch of stuff all over the floor, so I  
10 took him down there to clean that area up  
11 and we had a little confrontation there  
12 where we had to -- well, the union  
13 steward was right down from there, but --

14 Q Who's the union steward?

15 A Pat Camp.

16 Q You said a confrontation. Were voices  
17 being raised?

18 A Well, yes, they started getting raised,  
19 because what I wanted to do, Dayved  
20 didn't want to do a few things and the  
21 union steward was right there and he had

1 told the union steward that if -- I  
2 wasn't to talk to him anymore, that if I  
3 had to tell him anything, I had the  
4 steward and he'd tell him. That's when I  
5 raised my voice a little bit, I said, no,  
6 I'm your immediate supervisor. If I need  
7 to talk to you, I'm going to talk to you.  
8 I don't want to go through -- go find  
9 somebody else to go through that --

10 Q Back up. Did the union steward tell him  
11 or tell you not to talk to Dayved  
12 directly, but to go through him first or  
13 was it Dayved telling you?

14 A Dayved was telling -- told me through the  
15 steward. He told Pat, he says, I don't  
16 want him talking to me anymore. If he  
17 has anything to say to me, I want him to  
18 tell you and then you can tell me.

19 Q Okay. What was discussed before then  
20 that led to this heated argument?

21 A Well, I took Dayved down there and I

1           showed him that I wanted this cleaned up  
2           and everything and he said, okay, and I  
3           started walking away and all of a sudden,  
4           he started leaving the area again and I  
5           said where are you going? He said I got  
6           to go get my backpack and my Gatorade and  
7           all this other stuff, which is way up on  
8           the other side of the shop. I said,  
9           well, what do you need that for? He  
10          said, well, I got to have my Gatorade and  
11          everything down there. Well, we have  
12          different area through the whole  
13          department where we have Gatorade and  
14          drinking fountains where you can just mix  
15          your own right there, whatever you need.  
16          And I told him, I said, well, right  
17          there, there's Gatorade right there, I  
18          says right there is a bathroom right next  
19          to it. Why do you have to go get that  
20          other stuff, that's a waste of time.  
21          Besides, you're not supposed to be

1 walking around, just stay right down here  
2 and, you know, because of his injury and  
3 everything, he wasn't supposed to be  
4 doing that much walking. So I said right  
5 there is everything you need and that's  
6 when the union steward walked by and he  
7 grabbed the union steward.

8 Q Now, during this time, were you trying to  
9 give Dayved a hard time just to be  
10 stubborn?

11 A No, not to be stubborn, I didn't mean to  
12 give him a hard time at all. What I  
13 wanted done was a little bit of work for  
14 the time that he's there.

15 Q Okay. Now, he also testified that there  
16 was an occasion where he cracked some  
17 taps on one of the dies, I think, and he  
18 was asked to write a letter to put in his  
19 file. Do you know anything about writing  
20 a letter for the file?

21 A I wasn't involved in that, no.

1 Q But is this like a procedure of the  
2 company's or --

3 A Yes, we do that if there's damage to a  
4 trim die or whatever that we feel that  
5 there was something that the individual  
6 didn't do correctly or should have done  
7 correctly, then we do do that.

8 Q Do what, the letter?

9 A Ask them to write a letter.

10 Q What's the purpose of this?

11 A The purpose of doing this, you know,  
12 there's times where things do get broke,  
13 you know, but it happens a couple times,  
14 we'll ask an individual to write down  
15 simply just what happened, you know,  
16 they're not saying they did something  
17 wrong or whatever. We just want them to  
18 write down what had happened and  
19 everything and then that goes in their  
20 files and it makes them think about it a  
21 little more, you know, oh, wow, this is

1           going in my file, I got to watch what I'm  
2           going a little closer and do a good job,  
3           try to make sure this doesn't happen  
4           again.

5       Q       Does this happen every time when there's  
6           damage done or, you know, something  
7           breaks down?

8       A       No, we don't have them write it all the  
9           time. No, there's times that if we feel  
10          it's a mechanical breakdown, mechanical  
11          problem, then, no, we don't have them  
12          write anything.

13      Q       Okay. Was Mr. Woodward the only person  
14           that was asked to write a letter to put  
15           in the file in this case or were other  
16           people --

17      A       No, many people.

18      Q       Are supervisors required to write letters  
19           for their file on occasion?

20      A       Supervisors themselves?

21      Q       Foremen?



1 A No.

2 Q Just the people working on the machines?

3 A Yes.

4 Q Now, I think he had also testified that  
5 he wanted to be on the Rex Roth team and  
6 there was a meeting about that. Do you  
7 recall anything about that?

8 A Yes, Dayved was upset because he wasn't  
9 on that Rex Roth team.

10 Q Can you describe what the Rex Roth team  
11 is?

12 A Sure. Different companies that we make  
13 things for that were one of our bigger  
14 customers, if we have problems with their  
15 jobs, there was teams that were organized  
16 to do some problem-solving on these jobs  
17 and they would, wherever these jobs,  
18 these castings went through different  
19 departments and that, we would select  
20 people that worked on them in different  
21 areas so he could do the problem-solving

1           on them, anything that was done with that  
2           job. And those people, this particular  
3           job at the time, we were having a lot of  
4           problems with a lot of rejects, a lot of  
5           things being sent back from the  
6           customers. So they had this team and then  
7           we decided to keep the team members that  
8           were running these jobs on those jobs to  
9           run all the time.

10          Q       These members had been picked before Mr.  
11               Woodard had demonstrated an interest in  
12               this?

13          A       Yes.

14          Q       And were you responsible for assigning  
15               people to this team or how were people  
16               put on this team?

17          A       No, the people that were put on that  
18               team, there were suggestions from -- all  
19               the supervisors were asked their  
20               suggestion on each shift who they would  
21               like to see run that and we were putting

1 people on there that were taking the  
2 extra step to make sure they did high  
3 quality work and weren't missing  
4 anything, didn't have any other work that  
5 had to be reworked a lot. Those were the  
6 individuals we were trying to put on  
7 there because we were in trouble with  
8 this customer at that time.

9 Q Do you know why Mr. Woodard wasn't picked  
10 for the team?

11 A Dayved's work at the time wasn't at the  
12 standards that we wanted to be put on  
13 there. I think we picked three people  
14 per shift, if I recall, and Dayved was  
15 not one of those three.

16 Q Okay. Did it have anything to do with  
17 his race?

18 A Oh, absolutely not. As a matter of fact,  
19 Jamal Shields was on that team and Jamal  
20 is an African-American.

21 Q Now, you had mentioned a couple times

1                   during your testimony that there were  
2                   some meetings held with Mr. Woodard and a  
3                   union representative and maybe members of  
4                   management or yourself. Do you recall  
5                   attending these types of meetings?

6           A        Yes, a couple.

7           Q        They're probably in response to  
8                   complaints that he had?

9           A        Yes.

10          Q        Okay. Do you recall any specific  
11                   meetings?

12          A        Yes, I already talked about the one and I  
13                   thought that I satisfied -- as a matter  
14                   of fact --

15          Q        The one with the job assignments?

16          A        The job assignments and felt that I had a  
17                   problem with him.

18          Q        Okay. And any other meetings do you  
19                   recall?

20          A        There was one other short meeting with my  
21                   boss, Butch Smith, the same thing, he was

1           complaining that I was out to get him or  
2           treating him unfairly.

3           Q       Were you out to get him?

4           A       No.

5           Q       Did you treat him differently than other  
6           people?

7           A       No, I didn't treat him differently than  
8           anybody else. All I want people to do is  
9           pretty much stay at their machines and do  
10          a good day's work.

11          Q       Now, with respect to Mr. Woodard's  
12          complaints, were his complaints addressed  
13          during these meetings, like did an  
14          investigation follow or, you know, what  
15          happened during these meetings?

16          A       Well, there wasn't any investigation that  
17          followed.

18          Q       Did they talk to the people involved?

19          A       Oh, sure.

20          Q       Okay. And you said a union representative  
21          was there. Do you know if any union

1           action had been taken by the union on  
2           behalf of Mr. Woodard?

3           A       No, I don't believe so.

4           Q       During these meetings that you attended,  
5           do you recall whether Mr. Woodard was  
6           told by yourself or anybody else that  
7           nothing would be done about his  
8           complaints?

9           A       Not by myself, no.

10          Q       Did you hear anybody say something like  
11          that, that nothing is going to be done or  
12          something to that affect?

13          A       Not on the company's end of things, no.

14          Q       Now, when Mr. Woodard worked at PHB, did  
15          any of his coworkers complain to you  
16          about him?

17          A       About Dayved?

18          Q       Yes, about his work performance or  
19          anything to that affect?

20          A       People that relieved his machines and  
21          stuff like that were, during lunches,

1 take too long of lunches and Dayved  
2 wouldn't be the only one. There's other  
3 ones that do that, also, but if we didn't  
4 talk one-on-one with the individual, most  
5 of the times what I did when people  
6 started complaining about people taking  
7 too long of breaks, I would have the  
8 union steward go and talk to everybody  
9 and that way, it covers the whole group  
10 and that and if we had any problems after  
11 that, it prolonged, then I would go and  
12 talk to the individual.

13 Q Now, you said you'd have the union  
14 steward talk to everybody. Did that  
15 include Mr. Woodard?

16 A Yes.

17 Q Did Kerry Goodwine -- or actually was  
18 Kerry Goodwine an employee at PHB during  
19 the time Mr. Woodard worked there?

20 A Yes.

21 Q Did he work in the same department as you

1 did?

2 A Yes.

3 Q Did he ever mention anything to you about  
4 Mr. Woodard?

5 A Yes, he did.

6 Q What did he say?

7 A That one time -

8 MR. JOHNSON: Objection, this  
9 is hearsay.

10 MS. PETERSEN: This is going to  
11 be, I expect this person to testify  
12 to day.

13 THE JUDGE: You're going to call  
14 this witness, so I'm going to allow  
15 the testimony. You may answer the  
16 question.

17 THE WITNESS: That meeting that  
18 I discussed about where I had the  
19 union president there, the union  
20 steward, and everything when we  
21 talked and I compared people on job



1 assignments and everything, they  
2 looked okay and that, Dayved had  
3 said that in that meeting, he  
4 brought up Kerry Goodwine's name  
5 and Jamal's name, saying they also  
6 had a problem and how I did things  
7 as a supervisor assigning jobs and  
8 everything and after that meeting  
9 was over, the very next day, Kerry  
10 had approached me and asked if he  
11 could talk to me and I said sure,  
12 so we went in my office. And he  
13 told me that he understood that  
14 Dayved brought his name into the  
15 meeting yesterday and stuff and I  
16 said, yeah, he did. He said, well,  
17 I want you to know right from him  
18 that he had already talked to  
19 Dayved and told Dayved to never  
20 bring his name up in a conversation  
21 again with problems. He says if I

1 have a problem with you, I'll come  
2 to you myself and talk to you. He  
3 said I want you to know, I don't  
4 have a problem with you, I don't  
5 have a problem with how -- you  
6 treat me real good and everything.  
7 He says I don't have a problem with  
8 you. Then he also told me at that  
9 time that I should watch things,  
10 how they're done and everything,  
11 because Dayved has a problem with  
12 me and he likes to -- he's known  
13 Dayved for a long time and he likes  
14 to try to find ways to get things a  
15 little easier.

16 BY MS. PETERSEN:

17 Q Did you understand what he meant by that?

18 A I guess what he was trying to tell me was

19 --

20 MS. PETERSEN: We'll address  
21 this with Kerry at his deposition.

1 MR. JOHNSON: Well, if he's  
2 guessing, it's speculation.

3 THE JUDGE: Sustained.

4 BY MS. PETERSEN:

5 Q Let's move on. Now, do you recall Mr.  
6 Woodard being off work for approximately  
7 a year due to a non-work related shoulder  
8 injury?

9 A Yes, he was probably off about a year.

10 Q Did you ever see him come into the shop  
11 during the period that he was not  
12 working?

13 A Yes.

14 Q What occasions were these?

15 A He came in every Wednesday for his -- I  
16 mean I only seen him every other week  
17 because I was only on second shift every  
18 other week, but during that period of  
19 time, he come in every week for his  
20 paycheck.

21 Q Every week that he was off work?

1 A Yes.

2 Q Now, was he required to come in to get  
3 his check, do you know?

4 A No, that could have been mailed to him.

5 Q Did you ever talk to him during these  
6 visits that he made to the shop?

7 A Yes, one time I happened to go into  
8 process control after lunch to get some  
9 stuff and he was about to come in to get  
10 his paycheck and he was in there talking  
11 to individuals and I said hi to him and I  
12 asked him, I said, hey, how you doing,  
13 when are you going to be coming back to  
14 work? He says, yeah, right, like you  
15 won't be back. I said sure. He acted  
16 like why do you care, you know, I don't  
17 like to see anybody off work. I want to  
18 see them come back to work.

19 Q Did you ever notice him feeling  
20 uncomfortable or unhappy about being  
21 there and talking to you or being at the

1 shop, your impressions?

2 A No, there's times where he didn't seem to  
3 -- at that time, he seemed kind of  
4 awkward, you know, like he didn't believe  
5 I cared about it or anything.

6 Q Now, during the time Mr. Woodard worked  
7 there, did you try to single him out,  
8 make him a target or harassment by  
9 yourself or make life difficult for him  
10 as his supervisor?

11 A No.

12 MS. PETERSEN: That's all I  
13 have. Thank you, Mr. Sayers.

14 THE JUDGE: You may cross-  
15 examine.

16 \* \* \*

17 **CROSS-EXAMINATION**

18 BY MR. JOHNSON:

19 Q Let me just start with something you  
20 testified to to begin with in regards to  
21 Kerry Goodwine, your testimony is that

1 Mr. Goodwine came and saw you and said he  
2 had no problems with you?

3 A Um-hmm.

4 Q And he had no problems with the company?

5 A Right, he didn't have any problem.

6 Q Are you aware that he filed a claim of  
7 discrimination?

8 A With the company?

9 Q Yes.

10 A Well, he filed discrimination at one time  
11 with one of my foremen, which we had  
12 taken care of that.

13 Q You're not aware that he filed a  
14 complaint with the EEOC?

15 A His name was on the thing when we went  
16 through the EEOC, yes.

17 Q Are you aware that the EEOC did an  
18 investigation based on his complaints?

19 A Again, his name was with Dayved's, but  
20 that was, I believed to be Dayved's  
21 report.

1 Q So you have no independent knowledge that  
2 Mr. Goodwine is currently litigating a  
3 Federal lawsuit against PHB for  
4 discrimination?

5 A I don't know this. I know Dayved is.

6 Q Are you aware of any other lawsuits  
7 against PHB based on discrimination  
8 except Mr. Woodard's?

9 A Right now, just Mr. Woodard's, yes.

10 Q In the past, were there other lawsuits  
11 based on discrimination against PHB?

12 A Mr. Jackson had one, Freddy Jackson.

13 Q Do you know roughly around what time  
14 period that was?

15 A No, I don't.

16 Q Is that the only other lawsuit that  
17 you're aware of?

18 A Yes.

19 Q Do you know what the result of that  
20 lawsuit was?

21 A Not completely, no. It didn't involve

1 me.

2 Q But, if you know, was it based on racial  
3 discrimination?

4 A I really don't know.

5 Q Was Mr. Jackson black?

6 A Yes.

7 Q Did you ever receive any orders from --  
8 well, let me ask you this, who is your  
9 supervisor or boss? Who do you report  
10 to?

11 A At that time, it was Butch Smith.

12 Q And what is his position?

13 A He was manager of aluminum die cast.

14 Q Did you ever receive any instructions  
15 from Mr. Smith or anyone else as to how  
16 you were going to treat or have any  
17 policies in regards to discrimination?

18 A We don't put up a discrimination right  
19 from the get-go. I don't exactly know  
20 what you mean.

21 Q Well, do you agree with me that Mr.



1 Woodard at some point made some  
2 allegations that he was being treated  
3 unfairly based on his race?

4 A Yes.

5 Q What was done when those complaints were  
6 made, if anything?

7 A Well, with Dayved, we had a meeting, we  
8 talked about the discrimination and  
9 everything else and there wasn't any --  
10 didn't see where anything was coming from  
11 it.

12 Q When you say we didn't see anything there  
13 was anything coming from it, are you  
14 talking about yourself?

15 A Yes.

16 Q Did Mr. Woodard agree with you?

17 A Not entirely, no.

18 Q What about these derogatory comments, do  
19 you know anything about, any complaints  
20 about derogatory comments?

21 A No. What do you mean derogatory?

1 Q Well, let me ask you this, did Mr.  
2 Woodard ever complain that racial slurs  
3 were being said in the workplace?

4 A To me, no.

5 Q Did Butch Smith or any of the higher-ups  
6 in the company talk to you about the fact  
7 that someone had made complaints about  
8 racial slurs being made?

9 A There was one instance that I was not  
10 involved with. I believe it was Tommy  
11 Thompson (phonetic) was talking to  
12 another individual, but --

13 Q Who's Tommy Thompson?

14 A He was a foreman at the time in aluminum  
15 die cast.

16 Q What do you know about that incident?

17 A I don't know a whole lot. All I know is  
18 hearsay.

19 Q So your understanding is that Mr.  
20 Thompson used a racial slur?

21 A Just talking to another individual,

1 nothing too --

2 Q It wasn't directed to Mr. Woodard?

3 A No.

4 Q But it was said as far as you know?

5 A As far as I know, yes.

6 Q Was anything done in regards to a racial  
7 slur made by Mr. Thompson, whether it was  
8 to Mr. Woodard or a coworker?

9 A I know he was called up front and talked  
10 to. I don't know what kind of  
11 disciplinary actions or anything.

12 Q Is there a written policy on racial slurs  
13 being made by either employees and/or  
14 foremen?

15 A Written policy, I don't believe so. It's  
16 not tolerated, but I don't think there's  
17 anything written.

18 Q Do you know if any disciplinary action  
19 was taken against Mr. Thompson?

20 A I do not know that, no.

21 Q Now, I'd like to talk about assignments

1 on jobs.

2 A Okay.

3 Q I think originally your testimony that  
4 assignments are random?

5 A For the most part, yes.

6 Q Okay. And could you again explain how  
7 you decide what person is going to be on  
8 what machine?

9 A They're just placed basically, we have a  
10 board up there at each machine has a list  
11 and then every individual has a nametag  
12 and those nametags are just put at  
13 machines and as their machine finishes or  
14 breaks down or whatever, then their name  
15 is taken off and put to an open machine  
16 and then they have a separate sheet where  
17 the jobs are assigned priorities on how  
18 important they are, how quick they have  
19 to get them delivered. So then, of  
20 course, you go by priorities.

21 Q Now, at some point, did that policy of

1           how you made assignments change?

2           A        I don't know exactly what the timeframe  
3                    was, but we went to changing people  
4                    around every Wednesday.

5           Q        And I think your testimony was the policy  
6                    changed where you would move around every  
7                    Wednesday to rotate people off of harder  
8                    jobs?

9           A        We were attempting to get rotation, yes,  
10                   get frequent -- different frequency on  
11                   try to change them from a bigger machine  
12                   to a smaller machine.

13          Q        Were you still going down the list at  
14                    that point or not?

15          A        What do you mean going down the list?

16          Q        Well, originally you said you would go  
17                    down a list to assign people to these  
18                    jobs?

19          A        The board, yes -- oh, the list is a  
20                    priority list, that's what you're talking  
21                    about.

1 Q Were you still going down the board after  
2 you instituted this policy where you  
3 would switch every Wednesday?

4 A Well, that's where you get some of the  
5 natural changes. We were changing people  
6 around every Wednesday, but if people  
7 called off, then you would have to go by  
8 the priority list. So that person may go  
9 back to a bigger machine. That part of  
10 it, you know, that's just natural flow.  
11 If somebody called off, all of a sudden,  
12 okay, now you got to go to the lowest  
13 priority machine, shut that one down, and  
14 put that guy over to that machine to fill  
15 the shot.

16 Q Do you know when PHB instituted this  
17 policy?

18 A I don't know the date or anything, but we  
19 had some complaints on some people that  
20 were saying they were getting some bigger  
21 jobs and that, so that's why we came up

1 with that to try to eliminate that, to  
2 try a little more flow on it.

3 Q I know you don't know an exact date, but  
4 could you tell me a year?

5 A No, I don't know what year it was. It  
6 was shortly after we had that meeting  
7 with Dayved and there was some other  
8 people in the department, also, that were  
9 complaining about the same thing, so  
10 that's when Rex and myself sat down and  
11 we came up with this moving them around  
12 on Wednesdays to try to get a little more  
13 flow, to try to help the problem, if  
14 there was a problem with people being on  
15 the same machine too long.

16 Q Do you know if there were any union  
17 grievances filed by Mr. Woodard?

18 A No, I do not.

19 Q If there were, would you be a part of the  
20 grievance procedure?

21 A Only if they were to come and get

1 information from me, yes.

2 Q So you're not aware of any grievances  
3 filed by Mr. Woodard in any respect?

4 A No. The only time we were to get  
5 involved in that is if the grievance was  
6 filed, then they would go through the  
7 grievance thing through personnel and  
8 everything and then get us involved if it  
9 ever got that far, but I was never  
10 brought in on anything like that.

11 Q It never got that far with Mr. Woodard?

12 A No, not to my knowledge.

13 Q Mr. Sayers, you testified as to Mr.  
14 Woodard not being at his machine?

15 A Correct, at times.

16 Q And I think you testified that only  
17 happened twice; is that correct?

18 A No, that didn't only happen twice. I  
19 said there was two instances that I  
20 stopped Dayved and talked to him and  
21 explained to him that this creates some



1 problems. You know, the other time that  
2 I didn't talk about, I walked by his  
3 machine to look at castings again and he  
4 wasn't there, so I walked by -- this was  
5 603, so I walked over to use the phone in  
6 the process to page him and when I picked  
7 up the phone, he's talking on the phone  
8 and here, there's another phone in the x-  
9 ray room and Dayved was talking on it.  
10 So I hung it up and I waited for him to  
11 come out and when he was done talking on  
12 the phone, he's in this room where you  
13 can't see him talking on the phone and  
14 his machine is out there running all by  
15 itself. So when he came out, I just  
16 simply talked to him, Dayved, this is the  
17 kind of stuff that creates problems. You  
18 can't do this, please, you know, please  
19 don't do this stuff.

20 Q Did anything that day? I mean you said  
21 not being at the machine could create

1 problems. Was there a malfunction or a  
2 problem with the machine on that date?

3 A Nothing happened at that time, no, but  
4 that doesn't mean that it couldn't.

5 Q And I believe you have no knowledge as to  
6 how long he was away from the machine?

7 A No.

8 Q So it could have been just a few seconds?

9 A It was more than a few seconds because  
10 when I walked by the machine, I looked at  
11 the part, he was no longer there. I  
12 walked up and down the aisle and then I  
13 walked up to use the phone in process and  
14 then I waited for him to stop when he was  
15 done with his conversation, so it was  
16 more than just a few seconds. You're  
17 talking at least minutes.

18 Q I'd like to talk about the period of time  
19 that Mr. Woodard was on light duty and  
20 the incident you had testified to in  
21 regards to a stool.

1 A Okay.

2 Q What were Mr. Woodard's restrictions at  
3 the time, if you know?

4 A His restrictions at the time that he  
5 could only do so much walking, you know,  
6 according to when he felt uncomfortable  
7 with how much standing or walking, he was  
8 to sit down.

9 Q Okay. Now, you think you testified to,  
10 he had a job that would only take a  
11 couple hours of his shift?

12 A Um-hmm.

13 Q Then you were trying to find work for him  
14 to do?

15 A To fill the rest of the time, correct.

16 Q And you testified as to taking him down  
17 to different areas of the plant?

18 A Um-hmm.

19 Q And that was to clean up?

20 A Yes, simple sweeping.

21 Q All right. Did you ever just tell Mr.

1 Woodard to report to or to go an area of  
2 the shop and clean up?

3 A Sure, different machines.

4 Q But you testified that you would take him  
5 from place to place?

6 A I took him to 603 the very first time to  
7 tell him what to do and everything and  
8 then after that, I took him down, yes, I  
9 took him down to 1600 ton two to show him  
10 exactly what area we needed cleaned up.

11 Q And what does the clean-up entail? Is  
12 that just --

13 A Simple sweeping.

14 Q And you had to physically show him?

15 A Sure.

16 Q And each time you took him to a different  
17 area, you would actually go with him and  
18 show him what to sweep?

19 A No, just those two times, the very first  
20 time, then after that, I told him just to  
21 go right down the line from machine to

1 machine, and then the second time.

2 Q I've never been in your plant, sir, but  
3 there's been some references to Gatorade.  
4 Mr. Woodard would have Gatorade or there  
5 would be Gatorade available for the  
6 employees. I assume it's a relatively  
7 hot place in there?

8 A It can be during the summertime, yes.

9 Q So would it be unusual for Mr. Woodard to  
10 have his own Gatorade that he would have  
11 during his shift?

12 A Yes, Dayved had a backpack he usually  
13 carried with him from whenever he went on  
14 a machine, yes.

15 Q That was not just when he was on light  
16 duty, but for the whole time he was  
17 employed at PHB?

18 A Um-hmm.

19 THE JUDGE: You need to say yes  
20 or no to the question.

21 THE WITNESS: Yes. Sorry.

1 THE JUDGE: That's all right.

2 BY MR. JOHNSON:

3 Q So it wasn't unusual for Mr. Woodard to  
4 say I need to get my backpack and  
5 Gatorade?

6 A He usually had that at his machine, yes.

7 Q Do you know of any other complaints Mr.  
8 Woodard made in regards to discrimination  
9 other than what we talked about already?

10 A Not personally, no.

11 Q Are you aware of an incident where it was  
12 alleged that there was some graffiti in  
13 the bathroom?

14 A I seen and heard of it, no, just through  
15 these proceedings is all I heard of it.

16 Q So you knew nothing about it?

17 A No.

18 Q Until this workers' compensation matter  
19 started?

20 A Right, that and the thing that I went  
21 through with the EEOC.

1 Q So you became aware of the graffiti when  
2 the EEOC did their investigation?

3 A Yes, they asked me questions, correct.

4 Q And your testimony would have been that  
5 you didn't know anything about it?

6 A Correct.

7 Q Was there ever a memo circulated among  
8 the foremen or a meeting held to discuss  
9 allegations of discrimination occurring  
10 at PHB at any time?

11 A No, I don't believe so.

12 MR. JOHNSON: That's all the  
13 questions I have.

14 THE JUDGE: Any redirect?

15 \* \* \*

16 **REDIRECT EXAMINATION**

17 BY MS. PETERSEN:

18 Q Mr. Sayers, did you ever see graffiti or  
19 writings in any of the bathrooms at PHB  
20 that you entered that were racist in  
21 nature?

1           A           Racist, no. There is stuff on the walls  
2                       all the time, but our janitor gets it  
3                       painted over usually as quick as he sees  
4                       stuff, he usually paints over.

5           Q           What kind of stuff is on the walls over  
6                       there?

7           A           It's just, I get things written about me,  
8                       people, you know, somebody don't like  
9                       somebody else, they write something on  
10                      there, it's like a bunch of little kids.

11          Q           Was there anything written about Mr.  
12                      Woodard in particular?

13          A           No, I don't really pay any attention to  
14                      what's written on there. You see what's  
15                      there, but you get it painted over.

16          Q           Oh, just for the court reporter, how do  
17                      you spell your last name?

18          A           S-a-y-e-r-s.

19                      MS. PETERSEN: That's all I  
20                      have. Thank you.

21                      THE JUDGE: Anything else,



1 Attorney Johnson?

2 MR. JOHNSON: Just a few  
3 questions, your Honor.

4 \* \* \*

5 **RECROSS-EXAMINATION**

6 BY MR. JOHNSON:

7 Q Are you aware that the EEOC made a  
8 determination that there was, in fact --

9 MS. PETERSEN: I'm going to  
10 object. I don't see the relevancy  
11 to the instant proceedings.

12 THE JUDGE: That there was a  
13 finding by the EEOC that there was  
14 discrimination at PHB?

15 MS. PETERSEN: I don't think  
16 it's relevant to whether there is  
17 abnormal working conditions for Mr.  
18 Woodard, in particular.

19 THE JUDGE: The basis of the  
20 abnormal working conditions in the  
21 case is the allegation of racial

1 discrimination. Objection  
2 overruled.

3 MR. JOHNSON: Thank you, your  
4 Honor.

5 BY MR. JOHNSON:

6 Q Are you aware of the determination made  
7 by the EEOC?

8 A No, I don't know what the final outcome  
9 was, no.

10 Q You're not aware that they found that  
11 there was graffiti in the bathroom of a  
12 burning cross?

13 A No. I've heard and read that, but I, you  
14 know, know nothing else about it.

15 MR. JOHNSON: That's all the  
16 questions I have.

17 MS. PETERSEN: Nothing further.

18 THE JUDGE: I have a couple  
19 questions for you. You indicated  
20 that part of your job in managing  
21 the whole department or supervising

1 the whole department is assigning  
2 operators to machines; is that  
3 correct?

4 THE WITNESS: Yes, ma'am.

5 THE JUDGE: So you would be the  
6 person ultimately responsible for  
7 assigning Mr. Woodard to whatever  
8 machine he was assigned to; is that  
9 correct?

10 THE CLAIMANT: I'm one of three  
11 or four people, yes, but on that  
12 shift, my dispatcher will put  
13 people on there and then if -- I'll  
14 move them around after that if they  
15 need to be moved around as far as  
16 priorities.

17 THE JUDGE: The assignment of  
18 jobs, is that done on a weekly --  
19 the assignment to machines, is that  
20 done on a daily basis or is that  
21 done on a weekly basis?

1 THE WITNESS: It could be daily,  
2 all depending on what jobs finish,  
3 what people call off, you have to  
4 fill the gaps and everything.

5 THE JUDGE: You also testified  
6 in describing some of the work  
7 there, that an individual could be  
8 assigned to one particular job for  
9 three or four days in a row; is  
10 that correct?

11 THE WITNESS: Yes, ma'am.

12 THE JUDGE: That would be the  
13 same machine producing the same  
14 part; is that correct?

15 THE WITNESS: Yes.

16 THE JUDGE: If it is a Wednesday  
17 and that person is not done with a  
18 particular job that they have been  
19 working, would they still be pulled  
20 and reassigned or do they have to  
21 finish the job that they started?

1 THE WITNESS: What we were doing  
2 at that time on Wednesday, they  
3 would run it Wednesday, Thursday,  
4 and Friday, and then it didn't  
5 matter what they did on the  
6 weekend, if that job was still  
7 running or that machine, it didn't  
8 even require the same job, they  
9 would be on that machine, sometimes  
10 that job might finish, the next day  
11 it would be a different job that's  
12 in there, but they're on that same  
13 machine for three days at the end  
14 of the week and then the two days  
15 at the beginning of the next week  
16 until they got moved on Wednesday  
17 again.

18 THE JUDGE: Are there particular  
19 operators that are assigned to, I'm  
20 just going to use as an example,  
21 let's say you have five presses or

1 five die cast machines. Would I  
2 always get assigned, if I was a die  
3 cast operator, to machine one?

4 THE WITNESS: No.

5 THE JUDGE: Is that where the  
6 rotation comes in?

7 THE WITNESS: Right.

8 THE JUDGE: Does rotation have  
9 to do with the machine or does it  
10 have to do with the difficulty of  
11 the particular job being done?

12 THE WITNESS: Usually the  
13 machine. We have machines, as far  
14 as just giving an example, we did  
15 have machines as small as a 250-ton  
16 machine and then they go all the  
17 way as big as a 2,000-ton machine  
18 and, of course, you're bigger  
19 machine is going to produce a  
20 little bigger part.

21 THE JUDGE: Does that make that

1 particular machine more difficult  
2 to operate?

3 THE WITNESS: Not necessarily.

4 THE JUDGE: You also described  
5 the speed or the cycle of the  
6 product being produced could also  
7 be a factor whether or not it's a  
8 difficult job?

9 THE WITNESS: Right. Your  
10 smaller machines will go at a more  
11 frequent pace.

12 THE JUDGE: Is it your testimony  
13 that in all the years that you've  
14 been employed at PHB Die Casting,  
15 you have never heard racial slurs  
16 on the job site?

17 THE WITNESS: I've heard them,  
18 of course, and like I said, they're  
19 not tolerated. If I hear somebody  
20 say something, I tell them, hey,  
21 guys, watch what you're saying,

1 watch what you're doing.

2 THE JUDGE: Have you ever had to  
3 take any disciplinary action  
4 against co-employees or foremen for  
5 this type of behavior?

6 THE WITNESS: Well, just  
7 recently, just recently we have  
8 just done that last week and in the  
9 past, we have talked to other  
10 people, too, yes.

11 THE JUDGE: Have you taken any  
12 formal disciplinary action where  
13 someone is written up or suspended  
14 for three days or anything for that  
15 type of behavior?

16 THE WITNESS: Yes.

17 THE JUDGE: During the time that  
18 Mr. Woodard was employed there, did  
19 you ever have to take action  
20 against a co-employee or a  
21 supervisor for that type of



1 behavior?

2 THE WITNESS: I don't believe  
3 so.

4 THE JUDGE: You yourself did not  
5 see the graffiti that was alleged  
6 to be in the bathroom that  
7 consisted of a burning cross?

8 THE WITNESS: No, ma'am.

9 THE JUDGE: How long was Mr.  
10 Woodard on light duty for the  
11 restrictions on his leg or ankle?

12 THE WITNESS: I'm not really  
13 sure.

14 THE JUDGE: Was it more than a  
15 couple days?

16 THE WITNESS: Yes.

17 THE JUDGE: Was it several  
18 weeks?

19 THE WITNESS: Yes.

20 THE JUDGE: And during that  
21 time, did you, on a daily basis,

1 take him to his job assignments?

2 THE WITNESS: No.

3 THE JUDGE: The description that  
4 you took him to one machine area  
5 and you took him to another machine  
6 area, did that all happen on one  
7 day?

8 THE WITNESS: No. I'm not even  
9 sure if it was the same week.

10 THE JUDGE: Generally speaking,  
11 when he was on light duty, he was  
12 assigned to the quality inspection  
13 job?

14 THE WITNESS: Process control,  
15 yes.

16 THE JUDGE: And the process  
17 control job, you understood only  
18 took several hours to perform; is  
19 that correct?

20 THE WITNESS: Yes.

21 THE JUDGE: Thereafter you

1 assigned Mr. Woodard to do some  
2 janitorial clean-up; is that  
3 correct?

4 THE WITNESS: Basically, yes.

5 THE JUDGE: And did he know  
6 where he was supposed to go every  
7 day to do the janitorial clean-up?

8 THE WITNESS: No, I showed him  
9 that first time, the first machine  
10 to go to, and then after that, I  
11 said just work down the row, you  
12 know, go from machine to machine  
13 where it needs to be swept up.

14 THE JUDGE: Did you have the  
15 occasion to walk with him from  
16 machine station to machine station  
17 or cell with the stool and carry  
18 the stool for him?

19 THE WITNESS: No, ma'am, no.  
20 There's usually a stool at every  
21 machine.

1 THE JUDGE: So there wasn't a  
2 stool that was to be taken from job  
3 area to job area?

4 THE WITNESS: No.

5 THE JUDGE: Do you remember how  
6 many meetings you may have attended  
7 with the claimant, Mr. Woodard, and  
8 union personnel regarding his  
9 complaints of discrimination?

10 THE WITNESS: I remember two.

11 THE JUDGE: Did one involve the  
12 assignment of jobs and he felt he  
13 was being treated differently in  
14 being given hard jobs because of  
15 his race?

16 THE WITNESS: That was in both  
17 meetings, yes.

18 THE JUDGE: What was the second  
19 meeting that you recall? What  
20 actual discrimination was involved?

21 THE WITNESS: It was just going

1 on the same thing with that he felt  
2 that I was treating him unfairly  
3 and the job assignment wasn't  
4 getting any better. It also had to  
5 do with the Rex Roth, him wanting  
6 to be on the Rex Roth team and  
7 running the Rex Roth job more.

8 THE JUDGE: And during that  
9 meeting, did he indicate that he  
10 felt he wasn't selected for this  
11 team for racial reasons?

12 THE WITNESS: I don't think so.

13 THE JUDGE: How many shifts does  
14 the aluminum die cast department  
15 have?

16 THE WITNESS: Three.

17 THE JUDGE: On the three shifts  
18 during the time that Mr. Woodard  
19 was employed, how many of the  
20 employees were black?

21 THE WITNESS: The time that he

1 was employed all three shifts --

2 THE JUDGE: You can give me a  
3 fluctuation or fluctuating between.

4 THE WITNESS: -- probably half a  
5 dozen.

6 THE JUDGE: By half a dozen, you  
7 mean about six?

8 THE WITNESS: About six, yes,  
9 right around there, I think.

10 THE JUDGE: On every shift, are  
11 there 50 employees approximately?

12 THE WITNESS: It varies. When  
13 we're slow, sometimes we slow down  
14 to about 30 or so, and then when we  
15 were real busy, it could be up to  
16 50. It really fluctuates on what  
17 kind of work we have and stuff.

18 THE JUDGE: If you had a  
19 complement of 30 to 50 employees on  
20 a shift, how many of those  
21 employees would be black?

1 THE WITNESS: Right now probably  
2 just two, two per shift.

3 THE JUDGE: Presently are there  
4 blacks employed at PHB?

5 THE WITNESS: Yes.

6 THE JUDGE: Could you tell me  
7 what's the longest period of  
8 employment a black employee has  
9 held at PHB?

10 THE WITNESS: Oh, boy, I don't  
11 -- there's several right now that  
12 are in the teens, I would believe.

13 THE JUDGE: After the meeting  
14 that you had with the union  
15 individuals that were present  
16 regarding the assignment of jobs  
17 and the issues as to whether or not  
18 Mr. Woodard was assigned more  
19 difficult jobs on a more regular  
20 basis than other employees, was  
21 there a finding made that his

1                   accusations were valid?

2                   THE WITNESS: Well, the union  
3                   steward or the -- as a matter of  
4                   fact, the union president told me,  
5                   he thought we were doing everything  
6                   we could. He felt that he didn't  
7                   find that I was doing anything  
8                   wrong. He told me at the time that  
9                   I handled that meeting real well  
10                  and presented everything, seemed to  
11                  be fair.

12                 THE JUDGE: And the union did  
13                 not file any other grievance  
14                 following that meeting?

15                 THE WITNESS: No, it was dropped  
16                 right there.

17                 THE JUDGE: Was there a report  
18                 generated as a result of that  
19                 meeting?

20                 THE WITNESS: No.

21                 THE JUDGE: Was there any



1 disciplinary action taken against  
2 anyone because of that meeting?

3 THE WITNESS: No.

4 THE JUDGE: As a supervisor,  
5 were you involved in the  
6 evaluations that were performed for  
7 Mr. Woodard?

8 THE WITNESS: I would look them  
9 over after they were done and read  
10 over. I don't remember Dayved's  
11 primarily, but that's usually what  
12 happens. If I might do them  
13 myself, all depending on what the  
14 classification is, but if it's  
15 Dayved's work classification, I  
16 like the foreman that is looking  
17 over the individual or the machine  
18 that individual runs, whoever is  
19 performing and is over that, that's  
20 who I want doing the evaluation  
21 because they have more hands-on

1                   experience with what the person  
2                   did.

3                   THE JUDGE: Do you have any  
4                   recollection at this time as to the  
5                   type of evaluations Mr. Woodard  
6                   had, whether they were excellent,  
7                   satisfactory, below average-type of  
8                   evaluations?

9                   THE WITNESS: No, I don't.

10                  THE JUDGE: To your knowledge,  
11                  was Mr. Woodard ever disciplined  
12                  because of a poor evaluation?

13                  THE WITNESS: No.

14                  THE JUDGE: You described Mr.  
15                  Woodard as performing fair work; is  
16                  that correct?

17                  THE WITNESS: Yes.

18                  THE JUDGE: But the work was  
19                  sufficient to keep him as an  
20                  employee; is that correct?

21                  THE WITNESS: Yes.

1 THE JUDGE: Did you ever write  
2 the claimant up or take any  
3 disciplinary actions against Mr.  
4 Woodard for him leaving his  
5 machine?

6 THE WITNESS: No. I was trying  
7 to just get to him so he would know  
8 that that's going to create  
9 problems, it's a safety problem  
10 most of all that he needs to stay  
11 at his machine.

12 THE JUDGE: Were any of the  
13 meetings that you had with Mr.  
14 Woodard and the union and other  
15 management people, did they  
16 specifically involve allegations of  
17 racial discrimination?

18 THE WITNESS: Could you say that  
19 again?

20 THE JUDGE: Any of the meetings  
21 that you had with Mr. Woodard and

1 the union, did they involve  
2 specific allegations or racial  
3 discrimination?

4 THE WITNESS: It would be  
5 brought up, you know, that I had a  
6 problem, like, at the meetings and  
7 that, he thought I was racial and  
8 that, which I told him, no, I'm  
9 not, you know, I don't have a  
10 problem with African-Americans. I  
11 even told him in that one meeting,  
12 I said, as a matter of fact, my  
13 best friend in school was an  
14 African-American and he told me  
15 that didn't make any difference.

16 THE JUDGE: Have any other  
17 employees during the time that you  
18 have been employed at PHB brought  
19 discrimination charges against you?

20 THE WITNESS: Against me, no.

21 THE JUDGE: And you, yourself,

1 have never been disciplined by your  
2 manager or the owner for alleged  
3 racial discrimination against  
4 employees?

5 THE WITNESS: No way.

6 THE JUDGE: Have you been  
7 involved in the EEOC findings of  
8 fact or hearings in Mr. Woodard's  
9 case?

10 THE WITNESS: Had I been  
11 involved in that hearing, yes.

12 THE JUDGE: All right. Have you  
13 been involved in any other hearings  
14 with the EEOC with other employees  
15 who have brought racial  
16 discrimination charges against PHB?

17 THE WITNESS: No.

18 THE JUDGE: Do you supervise  
19 Gary Gebhardt?

20 THE WITNESS: I did, yes.

21 THE JUDGE: Is Mr. Gebhardt

1 still an employee of PHB?

2 THE WITNESS: No, ma'am.

3 THE JUDGE: Was he fired or did  
4 he voluntarily quit?

5 THE WITNESS: He was fired.

6 THE JUDGE: Could you tell me  
7 why he was fired?

8 THE WITNESS: There was a --  
9 through the EEOC when they did  
10 their evaluations and everything,  
11 Gary Gebhardt was interviewed. His  
12 interview came through that he had  
13 racial discrimination problems and  
14 that he had a problem with African-  
15 Americans, so that's why he was  
16 terminated.

17 THE JUDGE: And how long had Mr.  
18 Gebhardt been employed by PHB?

19 THE WITNESS: I would believe he  
20 was there for about 33 years.

21 THE JUDGE: An employee of that

1 length, were you aware of the fact  
2 that he was causing these types of  
3 problems in the workplace?

4 THE WITNESS: I had -- there was  
5 times where I was Gary's immediate  
6 supervisor. Gary, at times, would  
7 call different people names, not  
8 just African-Americans, you know,  
9 he would be a little rough at times  
10 and I would sit down and I had  
11 talks with him and everything and  
12 at one time, when we got a little  
13 slower, he was laid off because of  
14 this and this being his people  
15 skills and that's why he was laid  
16 off and when he came back, we had a  
17 talk with him and he got much, much  
18 better, you know, he turned right  
19 around on that. But then there was  
20 one little problem after that where  
21 he had supposedly told somebody

1 else that they had to make them  
2 work a little harder and he  
3 couldn't answer what he meant by  
4 "them" and that's what got him into  
5 that EEOC hearing and they asked  
6 him, I don't know exactly what they  
7 asked him, but he didn't come  
8 across very well at all through  
9 this interview with the EEOC and  
10 that's when our company decided  
11 that he had a problem that we did  
12 not want in our company any longer  
13 and they terminated him.

14 THE JUDGE: At 33 years of  
15 employment, he would have been  
16 eligible for his pension, et  
17 cetera, Mr. Gebhardt? Was he at  
18 that appropriate age and years of  
19 service?

20 THE WITNESS: We don't have a  
21 pension.



1 THE JUDGE: So any employees  
2 that work for 33 years and retire,  
3 they don't get any benefits?

4 THE WITNESS: No, we don't have  
5 a pension as far as the company  
6 people and that.

7 THE JUDGE: Is there some type  
8 of 401(k) type of plan that would  
9 be --

10 THE WITNESS: Whatever he has,  
11 they have an ESOP. I don't know if  
12 he still got that or not.

13 THE JUDGE: Was he in  
14 management, Mr. Gebhardt? Was he  
15 considered management?

16 THE WITNESS: Yes, ma'am, he was  
17 a foreman, a line supervisor.

18 THE JUDGE: He would not have  
19 been a union member?

20 THE WITNESS: No, he was not.

21 THE JUDGE: Did you supervise an

1 individual by the name of Tom  
2 Thompson?

3 THE WITNESS: For a short period  
4 of time, yes, I did.

5 THE JUDGE: What position did  
6 Mr. Thompson hold?

7 THE WITNESS: Same position,  
8 line supervisor, line foreman.

9 THE JUDGE: Is Mr. Thompson  
10 still an employee of PHB?

11 THE WITNESS: Yes, he is.

12 THE JUDGE: Have you ever had to  
13 discipline Mr. Thompson for  
14 situations involving where he may  
15 have racially discriminated against  
16 co-employees?

17 THE WITNESS: Have I? No.

18 THE JUDGE: Have you ever  
19 received any complaints that Mr.  
20 Thompson was racially  
21 discriminating against the

1 employees?

2 THE WITNESS: I haven't, no. He  
3 went through that one little -- he  
4 had some kind of an instance, but I  
5 was not involved in that.

6 THE JUDGE: And that was an  
7 instance where he was speaking and  
8 someone may have used inappropriate  
9 language?

10 THE WITNESS: Yes.

11 THE JUDGE: Now, if you  
12 supervised him, why were you not  
13 involved in that incident?

14 THE WITNESS: I only supervised  
15 him for a short period of time. I  
16 don't believe he was on my shift  
17 when that happened because he moved  
18 shifts a couple times.

19 THE JUDGE: Is there an employee  
20 by the name of Nick Hazenbek  
21 (phonetic).

1 THE WITNESS: Hazenbek.

2 THE JUDGE: Is he a supervisor  
3 or is he --

4 THE WITNESS: No, he is a union  
5 individual. His classification is  
6 called metal man.

7 THE JUDGE: Have you ever had --  
8 do you supervise him?

9 THE WITNESS: I did at times,  
10 yes.

11 THE JUDGE: During the time that  
12 you supervised him, did you ever  
13 have to discipline him for  
14 allegations of racial  
15 discrimination?

16 THE WITNESS: no.

17 THE JUDGE: Did you ever receive  
18 any complaints that he had been  
19 racially discriminating against  
20 employees?

21 THE WITNESS: No.

1 THE JUDGE: Do you supervise  
2 Mike Langer?

3 THE WITNESS: I did, yes.

4 THE JUDGE: Is he still an  
5 employee of PHB?

6 THE WITNESS: No, ma'am.

7 THE JUDGE: Did he voluntarily  
8 quit or was he fired?

9 THE WITNESS: I believe he  
10 voluntarily quit?

11 THE JUDGE: Did you have any --  
12 did you supervise him? I'm sorry,  
13 did I ask you that?

14 THE WITNESS: Yes.

15 THE JUDGE: Did you have any  
16 problems with his job performance,  
17 Mr. Langer's job performance?

18 THE WITNESS: Yes.

19 THE JUDGE: Do you recall an  
20 incident and you may not have been  
21 involved in it, but you may have

1 heard of it, where Mr. Langer was  
2 operating a machine, he left for  
3 the restroom, and as a result,  
4 something happened with the machine  
5 and parts were spewed all over the  
6 floor and someone had to clean up  
7 the mess and Mr. Langer was not  
8 made to do it, some other  
9 individual was made to do it; are  
10 you familiar with that?

11 THE WITNESS: No, I'm not.

12 THE JUDGE: Do you know who  
13 Shelly Antolik (phonetic) is?

14 THE WITNESS: Yes.

15 THE JUDGE: And what position  
16 does she hold?

17 THE WITNESS: She's in human  
18 resources.

19 THE JUDGE: At any time did you  
20 feel threatened by Mr. Woodard  
21 while he was employed there?

1 THE WITNESS: No.

2 THE JUDGE: Is Mr. Camp still  
3 employed at PHB, Pat Camp?

4 THE WITNESS: Yes.

5 THE JUDGE: Is he still a union  
6 member?

7 THE WITNESS: No.

8 THE JUDGE: At the time that Mr.  
9 Woodard was employed there, was Mr.  
10 Camp a union steward?

11 THE WITNESS: He was a union  
12 steward, yes.

13 THE JUDGE: Do you recall a  
14 meeting regarding an allegation  
15 that somebody was making farm  
16 noises or pig-call noises?

17 THE WITNESS: No.

18 THE JUDGE: How many meetings do  
19 you believe that you had that  
20 involved Mr. Woodard and the union,  
21 a rough estimate?

1 THE WITNESS: Three.

2 THE JUDGE: You don't remember  
3 more than three meetings during the  
4 time during that time --

5 THE WITNESS: That I was  
6 involved in, no.

7 THE JUDGE: The incident that  
8 you described where Mr. Woodard  
9 indicated that he didn't want you  
10 to speak to him directly, but  
11 rather through the union steward,  
12 what happened as a result of that?  
13 Did the union steward back him up?  
14 Did the union do anything about  
15 that?

16 THE WITNESS: I don't know what  
17 he did with that. At that time, I  
18 told Dayved that I was his direct  
19 supervisor and that if I needed to  
20 talk to him, I would. At that  
21 time, I excused myself from the



1 area.

2 THE JUDGE: If Mr. Woodard  
3 testified that while he was on  
4 light duty, you were following him  
5 around with a stool, would that  
6 basically be inaccurate?

7 THE WITNESS: Yes, ma'am, that  
8 is inaccurate.

9 THE JUDGE: Are you familiar  
10 with an individual by the name of  
11 William Diehl (phonetic), who may  
12 have been an electrician hired by  
13 PHB?

14 THE WITNESS: Yes.

15 THE JUDGE: He would not have  
16 been a PHB employee?

17 THE WITNESS: He is a PHB  
18 employee.

19 THE JUDGE: Oh, I'm sorry. You  
20 have your own electricians?

21 THE WITNESS: Yes, he works in

1 the maintenance department. He is  
2 one of the electricians.

3 THE JUDGE: You would not  
4 supervise Mr. Diehl?

5 THE WITNESS: No.

6 THE JUDGE: As a supervisor in  
7 the aluminum die cast, did you ever  
8 receive any complaints about Mr.  
9 Diehl's behavior while he was in  
10 your department?

11 THE WITNESS: No, ma'am.

12 THE JUDGE: Now, you indicated  
13 that discrimination is not  
14 tolerated, but there's no specific  
15 written policy within the employee  
16 handbook addressing discrimination  
17 to your knowledge?

18 THE WITNESS: Not to my  
19 knowledge, not that I recall.

20 THE JUDGE: Does PHB have  
21 annual, biannual meetings where

1           they discuss such things as racial  
2           discrimination or sex  
3           discrimination or gender  
4           discrimination or age  
5           discrimination, that those things  
6           are not really tolerated and the  
7           employees are trained or --

8           THE WITNESS: No.

9           THE JUDGE: Are you aware of any  
10          allegations that Mr. Gebhardt would  
11          purposely speed up the cycles of  
12          machines just to bother the  
13          operators?

14          THE WITNESS: No.

15          THE JUDGE: How long was -- and  
16          I assume Kerry Goodwine is a  
17          gentleman?

18          THE WITNESS: Yes.

19          THE JUDGE: How long was Mr.  
20          Goodwine employed by PHB?

21          THE WITNESS: I'm really not

1                   sure. He had to have been there  
2                   probably somewhere around five  
3                   years. I'm not really sure.

4                   THE JUDGE: And you supervised  
5                   Mr. Goodwine?

6                   THE WITNESS: Yes.

7                   THE JUDGE: Did Mr. Goodwine  
8                   ever bring complaints to you  
9                   regarding racial discrimination?

10                  THE WITNESS: Yes, the one that  
11                  happened with Mr. Gebhardt, came to  
12                  me and I had a meeting with that to  
13                  try to get to the bottom of that,  
14                  yes.

15                  THE JUDGE: Did that involve a  
16                  union meeting as well?

17                  THE WITNESS: I had the union  
18                  steward there involved, yes.

19                  THE JUDGE: Thank you, Mr.  
20                  Sayers, those are all the questions  
21                  I have.

1 Attorney Petersen, any follow-  
2 up?

3 MS. PETERSEN: No, I have  
4 nothing further.

5 THE JUDGE: Attorney Johnson?

6 MR. JOHNSON: Nothing further,  
7 your Honor.

8 THE JUDGE: You may step down.  
9 Let's take a ten-minute break here  
10 to allow restroom use and then you  
11 can call your next witness.

12 (Whereupon, a brief recess was taken.)

13 THE JUDGE: Please raise your  
14 right hand. Please have a seat.  
15 You may proceed with this witness.

16 \* \* \*

17 REX RYAN,

18 called as a witness on behalf of the  
19 Employer, and having been previously  
20 duly sworn, was examined and testified  
21 as follows:

**DIRECT EXAMINATION**

BY MS. PETERSEN:

Q Please state your name.

A Rex Ryan, R-y-a-n.

Q Are you employed by PHB?

A Yes, I am.

Q What's your title there?

A General foreman.

Q Are you familiar with the claimant in this case, Mr. Dayved Woodard?

A Yes.

Q How are you familiar with him?

A He was one of my operators.

Q Okay. When he worked there, were you also a general foreman at the time or did you have a different position?

A I was a general foreman.

Q Okay. What was your position in relation to Mr. Woodard? Were you his direct supervisor?

A I was his direct supervisor.

1 Q Okay. And he worked from February '98  
2 until 2003 -- or, yes, 2003; correct?

3 A As far as I know, yes.

4 Q Now, were you one of his supervisors  
5 during this time?

6 A Yes.

7 Q Okay. Now, Ron Sayers just testified in  
8 this matter. What's your relation to  
9 him? Are you the same --

10 A I'm the same thing he was, but I was one  
11 shift and he was on the other.

12 Q Did you rotate shifts with him?

13 A Yes.

14 Q You worked in the same department?

15 A Yes.

16 Q And he indicated that he was involved in  
17 assigning jobs to the employees in that  
18 department. Did you do that as well?

19 A Yes, I did.

20 Q And did you personally observe the people  
21 in your department as they worked?

1 A Yes.

2 Q Including Mr. Woodard?

3 A Yes, I did.

4 Q Now, did you have the same expectations  
5 from Mr. Woodard's work as you did for  
6 the other employees?

7 A Yes, I did.

8 Q There wasn't anything different?

9 A Hmm-um.

10 Q No?

11 A No.

12 Q Okay, you need to say yes or no.

13 A Sorry.

14 Q In your opinion, how was Mr. Woodard's  
15 work performance?

16 A He didn't act very aggressive, just very  
17 slow, didn't act -- the type of job that  
18 he had, the machine, you have to keep up  
19 with the machine and Dayved had problems  
20 doing that. He just -- didn't act to me  
21 like he wanted to do it, that was my



1 impression.

2 Q What was his attitude towards work, your  
3 impression?

4 A Well, he never got mad. You always had  
5 to keep telling him to keep the machines  
6 running.

7 Q Okay.

8 A Complained a lot, things like that.

9 Q Now, Mr. Sayers testified that he would  
10 occasionally see Mr. Woodard absent from  
11 his machine. Did that happen with you as  
12 well?

13 A If he asked for a break and sometimes he  
14 would walk off and be over here doing  
15 this or that when the machine was running  
16 by itself and we didn't like that.

17 Q Was there a problem with the machine  
18 running by itself?

19 A If it broke down or things like that or  
20 they had an oil leak or some kind of  
21 mechanical problem, there could be other

1 problems.

2 Q And did you say anything to Mr. Woodard  
3 about --

4 A Yes, I told him to go back to his  
5 machine.

6 Q Did you have to do this repeatedly or  
7 just one time?

8 A Off and on.

9 Q Now, when Mr. Woodard worked at PHB, did  
10 any of his coworkers complain to you  
11 about him and his work performance?

12 A No.

13 Q Now, did you ever work at PHB at the same  
14 time as Ron Sayers?

15 A Yes.

16 Q Did you ever observe Mr. Sayers picking  
17 on or harassing Mr. Woodard?

18 A When Mr. Sayers was working, I was at  
19 home.

20 Q Okay. So you didn't see him working?

21 A No.

1 Q Did you ever observe Mr. Sayers using  
2 racial slurs or derogatory remarks?

3 A No.

4 Q Towards Mr. Woodard?

5 A No.

6 Q Did you ever observe any supervisor or  
7 coworker using racial slurs, making  
8 derogatory remarks about Mr. Woodard or  
9 to Mr. Woodard?

10 A No.

11 Q Did you ever notice any of the  
12 supervisors or employees picking on or  
13 harassing Mr. Woodard?

14 A No.

15 Q Did Mr. Woodard ever complain to you  
16 directly about being treated unfairly at  
17 PHB?

18 A No.

19 Q Now, Mr. Woodard had previously testified  
20 about an incident involving an individual  
21 named Mike Langer and I think he relieved

1 him from his machine and when Mr. Woodard  
2 came back, there were parts all over the  
3 floor. Do you recall such an incident?

4 A Yes.

5 Q Can you tell me what happened?

6 A It was at dinnertime. Dayved went to  
7 lunch and I had Mike Langer relieve his  
8 machine. We was keeping it running on a  
9 continuous basis and Dayved called me  
10 over and said look at the mess and I  
11 walked over and there was castings laying  
12 all over and I told Dayved, I said -- he  
13 did complain to me about what happened  
14 and I told him to clean up the mess,  
15 start it back up, and I'll go talk to  
16 Mike Langer.

17 Q And what did you say to Mike Langer?

18 A I asked him what happened. He said, oh,  
19 I was just having problems and this and  
20 that and I told him just don't do it  
21 again. That was basically the extent of

1 it.

2 Q Did you hear Mike Langer or Dayved  
3 arguing or talking?

4 A No.

5 Q Did you walk away from Dayved laughing?

6 A No.

7 Q Did you ever see Mike doing this thing to  
8 other machines, leaving the parts on the  
9 floor?

10 A Yes, he was known for that.

11 Q So this wasn't just to Mr. Woodard?

12 A No.

13 Q Did you ever hear Mr. Langer make any  
14 racist remarks to Mr. Woodard?

15 A No, I didn't.

16 THE JUDGE: I'm sorry, what was  
17 the question?

18 MS. PETERSEN: Did you hear Mr.  
19 Langer making any racist remarks  
20 towards Mr. Woodard?

21 THE JUDGE: And your answer

1 was?

2 THE WITNESS: No.

3 THE JUDGE: Thank you.

4 BY MS. PETERSEN:

5 Q Now, do you recall an incident in which  
6 you had told Mr. Woodard to write a  
7 letter to be placed in his file because  
8 he had cracked some taps on a die?

9 A Yes, he didn't locate the casting right.  
10 The first time he did it, I just chewed  
11 him out, I guess, or whatever you want to  
12 call it and the second time, he did it,  
13 which was about ten or 15 minutes later,  
14 I told him you have to write me up a  
15 letter in your own words what happened  
16 and basically that's what it was.

17 Q And then the letter would go in his file?

18 A Went up to personnel.

19 Q Now, is this a policy of the company?

20 A Yes.

21 Q This isn't something that you made up

1 with Mr. Woodard?

2 A No.

3 Q Did you ask other people to do similar  
4 types of letters?

5 A Um-hmm.

6 Q Yes?

7 THE JUDGE: You need to say yes  
8 or no.

9 THE WITNESS: Yes. Sorry about  
10 that.

11 THE JUDGE: You need to let her  
12 finish her question before you  
13 start answering.

14 THE WITNESS: Okay.

15 BY MS. PETERSEN:

16 Q Did you tell him to write the letter  
17 because of his race?

18 A No.

19 Q Now, Mr. Woodard had also testified that  
20 he was constantly given more difficult  
21 jobs to do than other employees in his

1 area. Now, as a supervisor and I think  
2 you said you were responsible for  
3 assigning jobs to him, is this accurate?

4 A No, we assign the jobs as they came  
5 along.

6 Q Were you involved in a meeting regarding  
7 Mr. Woodard's complaints about his job  
8 assignments?

9 A No.

10 Q Do you recall anything like that?

11 A No.

12 Q Did he ever come to you directly with any  
13 types of complaints, be it his job  
14 assignments or problems with other  
15 coworkers or supervisors?

16 A Well, he'd ask me off and on why do I  
17 have to run this or why do I have to run  
18 that, that's just the way his job was. I  
19 mean it changed from day to day. He  
20 might be on this machine one day, this  
21 machine the next day. I remember one



1           time he did ask me why do I have to run  
2           this machine? Why don't you let the new  
3           people run it? I told him we did the  
4           same thing with you, we started all the  
5           new people out on the least difficult  
6           machines and as you progress, the longer  
7           you're there, the more you run the  
8           machines, we advance you up to the bigger  
9           ones so you can run anything in the  
10          place.

11         Q       So did you specifically set up to give  
12               him more difficult jobs or machines to  
13               do?

14         A       No.

15         Q       Do you recall attending any meetings with  
16               Mr. Woodard and members of management and  
17               union representatives regarding his  
18               complaints?

19         A       No.

20         Q       Now, during the time Mr. Woodard worked  
21               at PHB, did any of his coworkers complain

1 to you about him?

2 A We talked amongst ourselves that he was  
3 always leaving machines and things like  
4 that. We would give him a ten-minute  
5 break and he might not come back for half  
6 an hour and we'd have to go look for him,  
7 things like that.

8 Q Do you recall Mr. Woodard being off work  
9 for a shoulder injury for about a year?

10 A Yes.

11 Q Did you ever see him stop into the shop  
12 during this time?

13 A Yes, he came in and got his check.

14 Q Did you ever talk to him during this  
15 time?

16 A No.

17 Q But you did see him?

18 A Yes.

19 Q Did he seem not happy to be at the shop  
20 to you or uncomfortable?

21 A Basically he just walked by me and never

1           said anything.

2           Q       Okay. Now, in the bathrooms at PHB, did  
3                   you ever see pictures of a cross burning  
4                   or KKK on the bathroom?

5           A       No.

6           Q       Did you ever see any racist or racial  
7                   slurs written in the bathrooms?

8           A       No.

9                   MS. PETERSEN: I think that's  
10                  all I have. Thank you, Mr. Ryan

11                  THE JUDGE: Cross.

12                  MR. JOHNSON: Thank you, your  
13                  Honor.

14                               \* \* \*

15                               **CROSS-EXAMINATION**

16           BY MR. JOHNSON:

17           Q       Your testimony is you did not see a  
18                   burning cross or KKK written in the  
19                   bathroom; correct?

20           A       Yes.

21           Q       Are you aware -- did you ever hear

1 anything about that written in the  
2 bathroom?

3 A The first time I found out about it is  
4 when this all came about.

5 Q Okay. Nobody ever made any complaints to  
6 you?

7 A No.

8 Q There was never a memo or anything from  
9 management about --

10 A Well, we had them periodically through  
11 the years I've been there.

12 Q But there was nothing specific in regards  
13 to this allegation that there was a  
14 burning cross and a KKK written in the  
15 bathroom?

16 A Not that I can remember.

17 Q And the first time you heard about this  
18 is when you got involved in this?

19 A Yes.

20 Q Is that something you should have been  
21 made aware of?

1 A I would think so, yes, but I might have  
2 been.

3 Q Fair enough. Mike Langer, you talked  
4 about an incident with Mr. Woodard and  
5 Mr. Langer and I think you said Mr.  
6 Langer had a propensity to leave parts  
7 all over the place?

8 A Yes.

9 Q You went and talked to Mr. Langer because  
10 there was a mess in front of Mr.  
11 Woodard's machine?

12 A Yes, I did.

13 Q Did Mr. Langer have to help clean up the  
14 mess that he made?

15 A No, he didn't.

16 Q Did Mr. Langer receive any sort of  
17 discipline for the mess that he made?

18 A I basically just asked him why he did it  
19 and he would just shake his shoulders,  
20 this type of thing, and I told him do not  
21 do it again.

1 Q Just kind of like a who cares-type of  
2 thing?

3 A Basically on his part, yes.

4 Q That was the end of the incident as far  
5 as you were concerned?

6 A Right, but he had done it not only to  
7 Dayved, but other times during his course  
8 of employment.

9 Q Your testimony is that Mr. Woodard made  
10 no complaints to you?

11 A Not that I can remember, no.

12 Q He made absolutely no complaints about  
13 how he felt he was treated differently?

14 A No.

15 Q Did you ever tell him to go file a report  
16 if he thought he was discriminated  
17 against?

18 A No.

19 Q You participated in no meetings in  
20 regards to Mr. Woodard's complaints?

21 A None that I can remember.

1 Q And your testimony is you're not even  
2 aware of him having any complaints?

3 A No.

4 Q Are you aware of any racial --  
5 allegations of racial slurs in the  
6 workplace?

7 A I imagine there probably is, but nothing  
8 against Dayved.

9 Q Are you aware of an incident with a Mr.  
10 Thompson? Let me ask you this, do you  
11 know who Mr. Thompson is?

12 A No.

13 Q Is there a foreman named Tom Thompson at  
14 PHB?

15 A Yes.

16 Q Are you aware of a time when Mr. Thompson  
17 would have said something that was racial  
18 in nature?

19 A No.

20 Q So obviously there was no investigation  
21 or anything done if you're not --

1 A Not on my part, no.

2 Q Would you be Mr. Thompson's supervisor?

3 A No.

4 Q Is he above or below you?

5 A Below.

6 Q Who would be Mr. Thompson's supervisor?

7 A It would Mark Nye (phonetic) on the zinc  
8 department.

9 Q And you can't testify in any way really  
10 to the relationship between Mr. Woodard  
11 and Ron Sayers because you basically  
12 worked opposite shifts?

13 A Yes.

14 Q When you're there, he's not and when Mr.  
15 Sayers is at work, you're not?

16 A Right, yes.

17 Q Is it fair to summarize your testimony  
18 that you had no knowledge of Mr.  
19 Woodard's complaints of discrimination  
20 while he was working at PHB?

21 A Yes.



1 Q Are you aware of anyone else making  
2 complaints of racial discrimination at  
3 PHB?

4 A I heard about the Kerry Goodwine thing.

5 Q Who did you hear that from?

6 A Just like a rumor mill-type thing.

7 Q Were you part or did you participate in  
8 any way in regards to the EEOC  
9 investigation of Mr. Woodard's  
10 complaints?

11 A Yes.

12 Q What about Mr. Goodwine's complaints?

13 A I never had any problems with Kerry. In  
14 fact, the day that he left, he come up to  
15 me and shook my hand.

16 Q My question is did you participate in the  
17 EEOC investigation in regards to Mr.  
18 Goodwine's complaints?

19 A No.

20 Q Are you aware of anyone else filing a  
21 discrimination suit except for Mr.

1 Goodwine and Mr. Woodard?

2 A Just Mr. Goodwine.

3 Q Were you ever made aware of a  
4 discrimination suit filed by a Mr.  
5 Jackson?

6 A Yes.

7 Q Do you know anything about that suit?

8 A Just what I heard. He worked in a  
9 different department than I did.

10 Q What you heard, was it the same basic  
11 allegations that Mr. Woodard has made?

12 A Geez, it's been so long.

13 Q Fair enough. After the suit was filed by  
14 Mr. Jackson or the complaints to the EEOC  
15 made by Mr. Woodard, did PHB do anything?  
16 Were there meetings with you or the other  
17 supervisors in regards to allegations of  
18 discrimination or how you should conduct  
19 yourself or how employees should be made  
20 to act?

21 A Not that I can remember.

1 MR. JOHNSON: Okay, I don't  
2 have any further questions.

3 MS. PETERSEN: I just had one  
4 other question.

5 \* \* \*

6 **REDIRECT EXAMINATION**

7 BY MS. PETERSEN:

8 Q Mr. Ryan, do you recall an incident where  
9 Mr. Woodard, I guess, got up to go to the  
10 bathroom and someone in the department  
11 yelled, soo-ee (phonetic)? Do you recall  
12 anything like that?

13 A No.

14 Q So you didn't receive any complaints  
15 about that?

16 A No.

17 MS. PETERSEN: That's all I  
18 have.

19 THE JUDGE: How long have you  
20 been employed at PHB?

21 THE WITNESS: 39 years.

1 THE JUDGE: How long have you  
2 been a foreman?

3 THE WITNESS: 27.

4 THE JUDGE: 37 years?

5 THE WITNESS: 27 years.

6 THE JUDGE: 27 years. Are you  
7 familiar with an individual by the  
8 name of Gary Gebhardt?

9 THE WITNESS: Yes.

10 THE JUDGE: Did you supervise  
11 Mr. Gebhardt?

12 THE WITNESS: At one time, I  
13 did, yes.

14 THE JUDGE: Mr. Gebhardt is no  
15 longer employed by PHB; is that  
16 correct?

17 THE WITNESS: Yes.

18 THE JUDGE: Do you understand  
19 whether or not he voluntarily quit  
20 or was he terminated?

21 THE WITNESS: My understanding

1 was he was terminated.

2 THE JUDGE: Do you understand  
3 why he was terminated?

4 THE WITNESS: Because he made a  
5 racial remark.

6 THE JUDGE: While you were  
7 employed there, did you ever note  
8 Mr. Gebhardt to make racial  
9 comments?

10 THE WITNESS: No.

11 THE JUDGE: You testified that  
12 to your knowledge no one ever made  
13 racial slurs in the workplace; is  
14 that correct?

15 THE WITNESS: Yes.

16 THE JUDGE: You're going to tell  
17 me that during the 39 years that  
18 you were employed at PHB, you never  
19 heard of any racial comments being  
20 made?

21 THE WITNESS: I would imagine

1                   probably has been off and on, but I  
2                   don't pay any attention to it  
3                   because that stuff happens all the  
4                   time in every place you work.

5                   THE JUDGE: What policy does PHB  
6                   have with regard to racial  
7                   discrimination and racial slurs  
8                   being used in the workplace?

9                   THE WITNESS: It's not supposed  
10                  to happen.

11                  THE JUDGE: Did you ever have to  
12                  discipline anyone, co-employee or  
13                  subordinate for racial  
14                  discrimination or using racial  
15                  slurs in the workplace?

16                  THE WITNESS: No.

17                  THE JUDGE: Does Mr. Sayers have  
18                  an equal position to yours or does  
19                  he supervise you?

20                  THE WITNESS: No, he's the same  
21                  as I am.

1 THE JUDGE: Mr. Sayers testified  
2 that you guys alternate shifts?

3 THE WITNESS: Yes.

4 THE JUDGE: So generally you  
5 would equally supervise Mr. Woodard  
6 as much as Mr. Sayers would; is  
7 that correct?

8 THE WITNESS: Yes, every other  
9 week.

10 THE JUDGE: And Mr. Woodard  
11 never came to you with any  
12 complaints with regard to his job  
13 assignments or his feelings that he  
14 was being discriminated against?

15 THE WITNESS: Not being  
16 discriminated, but he complained  
17 all the time about what machines he  
18 had to run, why he had to run them  
19 and things like that.

20 THE JUDGE: Can you tell me was  
21 Mr. Langer formally disciplined for

1 the incident involving the machine  
2 that he relieved Mr. Woodard from?

3 THE WITNESS: What I did was I  
4 went and talked to him and asked  
5 him why he done it and he just  
6 shrugged his shoulders like that,  
7 like I don't care. I couldn't  
8 discipline.

9 THE JUDGE: Why couldn't you  
10 discipline?

11 THE WITNESS: Well, basically  
12 all I told him was just don't do it  
13 again.

14 THE JUDGE: All right. Is that  
15 something that you tolerate,  
16 individuals letting machines spew  
17 parts all over the place?

18 THE WITNESS: No, that's why I  
19 told him just don't do it again.

20 THE JUDGE: Well, why did you  
21 tolerate in on this specific



1 occasion?

2 THE WITNESS: Because it  
3 happened without my knowledge. I  
4 did go and tell him about it.

5 THE JUDGE: Now, you said Mike  
6 was known for this. So it appears  
7 that he has a history for doing  
8 this. Listen to my question, was  
9 he at any time disciplined for that  
10 type of action?

11 THE WITNESS: No.

12 THE JUDGE: Can you tell me why  
13 Mr. Langer was allowed to behave  
14 like that and was not disciplined?

15 THE WITNESS: It depends on what  
16 you mean by disciplined.

17 THE JUDGE: I mean oral warning,  
18 I mean written warning, I mean a  
19 letter in the file that explains  
20 his behavior.

21 THE WITNESS: An oral warning,

1 yes.

2 THE JUDGE: Was that the extent  
3 of the discipline that Mr. Langer  
4 received?

5 THE WITNESS: Yes, from me, yes.

6 THE JUDGE: And how many  
7 occasions on your shift, did Mr.  
8 Langer behave in this fashion?

9 THE WITNESS: That's the only  
10 one I can think of.

11 THE JUDGE: Is Mr. Langer still  
12 employed there?

13 THE WITNESS: No.

14 THE JUDGE: Did he voluntarily  
15 quit or was he fired?

16 THE WITNESS: He voluntarily  
17 quit.

18 THE JUDGE: Can you tell me why  
19 Mr. Langer was not made to clean up  
20 the mess that he made?

21 THE WITNESS: Because he was at

1 dinner at the time. Dayved told me  
2 when I came back from dinner.

3 THE JUDGE: Is that type of  
4 behavior tolerated from other  
5 employees?

6 THE WITNESS: No.

7 THE JUDGE: How long had Mr.  
8 Langer been employed at PHB?

9 THE WITNESS: I'm -- probably  
10 five to ten years.

11 THE JUDGE: During the time that  
12 you would have supervised Mr.  
13 Woodard, there were never any  
14 meetings with the union called  
15 because of complaints that Mr.  
16 Woodard may have had during the  
17 shift that you were supervising?

18 THE WITNESS: Not that I was  
19 involved in.

20 THE JUDGE: In your capacity as  
21 a foreman, are you involved in

1 meetings that involve grievances or  
2 complaints by employees with the  
3 union?

4 THE WITNESS: If I'm involved,  
5 yes.

6 THE JUDGE: By being involved,  
7 you mean if it's something that  
8 involves a situation that you were  
9 part of, is that what you mean?

10 THE WITNESS: Yes.

11 THE JUDGE: You would not be  
12 called in as a general supervisor  
13 or manager or anything like that to  
14 participate in the meeting?

15 THE WITNESS: No.

16 THE JUDGE: Is Mr. Butch Smith,  
17 he would be above you; is that  
18 correct?

19 THE WITNESS: Yes, he was my  
20 boss.

21 THE JUDGE: Did Mr. Smith ever

1 call you in for a meeting or have  
2 discussions with you of any  
3 complaints that Mr. Woodard had?

4 THE WITNESS: No.

5 THE JUDGE: Do you ever recall  
6 having a meeting in 2000 involving  
7 yourself, the claimant, and Rick  
8 Bartosick (phonetic)?

9 THE WITNESS: No, I don't.

10 THE JUDGE: Involving an  
11 incident where the claimant, Mr.  
12 Woodard, may have lost his temper  
13 with Mr. Sayers?

14 THE WITNESS: Not that I can  
15 remember, no.

16 THE JUDGE: Have you, yourself,  
17 ever been disciplined for  
18 allegations of racial  
19 discrimination?

20 THE WITNESS: No.

21 THE JUDGE: Have there ever been

1 any charges brought against you?

2 THE WITNESS: No.

3 THE JUDGE: Alleging that you  
4 racially discriminated against  
5 employees?

6 THE WITNESS: No.

7 THE JUDGE: Did you consider Mr.  
8 Gebhardt to have a problem that he  
9 on occasion would make racial  
10 comments while at work?

11 THE WITNESS: No.

12 THE JUDGE: Were you surprised  
13 that they decided to fire him after  
14 33 years of employment?

15 THE WITNESS: No, I wasn't  
16 surprised.

17 THE JUDGE: Why weren't you  
18 surprised?

19 THE WITNESS: Because he said or  
20 what he did, what it involved,  
21 probably should have been.

1 THE JUDGE: Do you know if that  
2 was the only incident or something  
3 similar to that occurring with Mr.  
4 Gebhardt?

5 THE WITNESS: Yes.

6 THE JUDGE: To your knowledge,  
7 that was the only incident?

8 THE WITNESS: Yes.

9 THE JUDGE: You don't remember  
10 there being a prior history of him  
11 having similar problems?

12 THE WITNESS: Not to my  
13 knowledge.

14 THE JUDGE: And you would have  
15 worked with him during the 39 years  
16 that you were employed?

17 THE WITNESS: Yes.

18 THE JUDGE: And 27 of those  
19 years, you were a supervisor;  
20 right?

21 THE WITNESS: Yes.

1 THE JUDGE: Those are all the  
2 questions I have. Ms. Petersen,  
3 any follow-up?

4 MS. PETERSEN: Just one  
5 question actually.

6 BY MS. PETERSEN:

7 Q As to Mike Langer, during the time he was  
8 there, the five or ten years, did he have  
9 this problem with letting the parts fall  
10 on the floor the entire time?

11 A Off and on. He was a disciplinary  
12 problem-type person.

13 Q Was he talked to during this time by  
14 yourself?

15 A By myself, yes.

16 Q How about other supervisors? Did they  
17 talk to him?

18 A As far as I know, yes.

19 MS. PETERSEN: Okay, that's all  
20 I have.

21 MR. JOHNSON: Just a few, your



1 Honor.

2 \* \* \*

3 **RECROSS-EXAMINATION**

4 BY MR. JOHNSON:

5 Q And this involves Mr. Langer again. You  
6 testified that there were parts all over  
7 the floor?

8 A A few laying on the floor.

9 Q What kind of parts were those?

10 A The casting that the machine was running  
11 at the time.

12 Q And you did not make Mr. Langer put any  
13 sort of note into his file?

14 A No. Basically all I did was I asked him  
15 why he did that.

16 Q Did you ever ask Mr. Woodard to put any  
17 notes in his file?

18 A Yes, with the incident with the  
19 mislocated casting.

20 Q Where he what?

21 A He had to slip a casting into a fixture

1 and drill four holes and he misplaced  
2 them twice.

3 Q Is that the only time you've had him put  
4 anything in his file?

5 A That I can remember, yes.

6 MR. JOHNSON: That's all I have.

7 THE JUDGE: You may step down.

8 Next witness.

9 MS. PETERSEN: I'll go get him.

10 THE JUDGE: Raise your right  
11 hand. Please have a seat. you may  
12 proceed with this witness.

13 \* \* \*

14 LOREN SMITH,

15 called as a witness on behalf of the  
16 Employer, and having been previously  
17 duly sworn, was examined and testified  
18 as follows:

19 **DIRECT EXAMINATION**

20 BY MS. PETERSEN:

21 Q Would you please state your name.

1 A Loren Smith.

2 Q And do you also go by Butch?

3 A Butch.

4 Q Are you employed by PHB?

5 A Yes, I am.

6 Q What's your title there?

7 A Currently plant engineer.

8 THE JUDGE: Sir, how do you  
9 spell your first name?

10 THE WITNESS: L-o-r-e-n.

11 THE JUDGE: Thank you.

12 BY MS. PETERSEN:

13 Q And how long have you held that title?

14 A Plant engineer?

15 Q Um-hmm.

16 A Currently I've held that for about a year  
17 and before, I had it for about 17 years,  
18 18 years, somewhere in there. I've been  
19 there a total of 20 years.

20 Q So what were you before you were plant  
21 engineer?

1 A I was manager of die cast.

2 Q How long were you manager of that die  
3 cast?

4 A From 2000 to the end of 2003, beginning  
5 of 2004.

6 Q So how were you in relation to Ron Sayers  
7 and Rex Ryan?

8 A I was their direct supervisor.

9 Q When you were manager of die cast?

10 A Yes.

11 Q You're no longer their supervisor?

12 A That's correct.

13 Q Okay. Now, are you familiar with the  
14 claimant in this case, Mr. Dayved  
15 Woodard?

16 A Yes.

17 Q How are you familiar with him?

18 A Well, Dave worked out in the department  
19 as DCPO production operator.

20 Q And you were one of his supervisors for  
21 that department?

1 A That's correct.

2 Q Did you ever have any direct contact with  
3 Mr. Woodard as he worked there?

4 A Not in the sense of like day-to-day  
5 assigning work or checking on the work or  
6 anything of that kind of thing. As I  
7 traveled through the department and my  
8 work, I would see Dave and say hi or  
9 how's the job going, things like that.

10 Q So you knew him to talk to him?

11 A Yes.

12 Q You saw him working?

13 A Yes.

14 Q How often were you in his department when  
15 he was there?

16 A I was in the department all the time, but  
17 at the time, I believe Dave was on second  
18 shift and was not out there a lot.

19 Q Okay. What was your impression of how he  
20 worked, his work performance?

21 A As far as his work performance was

1 concerned, I don't recall any complaints  
2 or any incidents where there was a  
3 problem as far as his work performance,  
4 the quality of his parts or anything like  
5 that.

6 Q How about his attitude?

7 A There were other issues that came up that  
8 Rex or Ron brought to me, yes.

9 Q Now, during your personal observation of  
10 Mr. Woodard and any conversations that he  
11 may have had with coworkers, supervisors,  
12 did you ever hear or see any of the  
13 supervisors or coworkers making  
14 derogatory or racial comments towards  
15 him?

16 A No, I did not.

17 Q Did you ever observe any of his  
18 supervisors singling him out, harassing  
19 him, or making life difficult for him as  
20 he worked there?

21 A No, I did not.

1 Q Now, Mr. Woodard testified there were  
2 several meetings that he placed you at  
3 the meetings with union representatives  
4 and some of his supervisors regarding  
5 complaints that he had of his treatment  
6 by a supervisor. Do you recall these  
7 meetings?

8 A Yes, I do.

9 Q What meetings do you recall?

10 A I recall a couple where Dayved had some  
11 complaints, some issues, and we met in my  
12 office. There was Ron Sayers was there,  
13 Dayved, and Pat Camp and myself and I  
14 asked Dayved at the time to state his  
15 concerns and issues and so we can discuss  
16 them, get them out in the open. At the  
17 time, and I'm not sure of the date or the  
18 exact time, I believe it was in 2001, I'm  
19 not sure, I did document them, but  
20 Dayved's concern at that time was that  
21 Ron had been picking on him or singling

1 him out, as you said earlier, and  
2 specifically giving him more difficult  
3 jobs and not keeping Dayved in the  
4 rotation of the jobs. That was one  
5 specific claim that was made. And I  
6 believe quench job was mentioned, also,  
7 if I'm not mistaken.

8 Q What is that again?

9 A A quench job. It's a job where the  
10 casting comes out of the machine and it's  
11 very hot and have to quench it in a water  
12 solution, cool it down to cool the  
13 casting down and sometimes if the weather  
14 is cold or after a lengthy period of time  
15 working in the quench, it's not the most  
16 desirable job to have, and guys don't  
17 like that, so you kind of rotate the guys  
18 around so everybody has a chance to work  
19 those kind of jobs.

20 Q What was done at the meeting in response  
21 to these complaints that he had?



1 A After the meeting, first of all, I sat  
2 down with Ron one-on-one and we discussed  
3 it and I talked to Ron, got his side of  
4 that. Then I went over to the  
5 dispatcher's office, I went through the  
6 jobs that Dayved had been assigned to and  
7 I had gone back through the computer  
8 records to look and see if we saw that  
9 Dayved had been assigned to a  
10 particularly bad job, a heavy job, or not  
11 been in the rotation like everybody else.

12 Q And what did you conclude after looking  
13 at --

14 A Well, I went back about three-and-a-half,  
15 four weeks through the computer records  
16 and found that I couldn't differentiate  
17 any difference between Dayved's work  
18 record, you know, the jobs he had been  
19 assigned to or anybody else. I picked  
20 several names at random just to look and  
21 I couldn't see anything that stood right

1 out.

2 Q Were these white employees that you  
3 picked at random?

4 A Yes, they were.

5 Q Okay.

6 A Sometimes just because you get assigned  
7 to a job, sometimes what happens is that  
8 job may break down and you'll get pulled  
9 off that job and put on the next  
10 available job. It may be a good job, it  
11 may not be, it just depends on how things  
12 go. So you may see a lot of changes in  
13 jobs from day-to-day, but you may end up  
14 working on jobs where a machine will  
15 break down and the next thing you know,  
16 you get put on this job. So there's a lot  
17 of change that happens.

18 Q So what happened after the meeting? How  
19 were these complaints addressed?

20 A At that particular time, I dismissed the  
21 claim.

1 Q Why?

2 A Well, I didn't feel there was any  
3 substance to it to be honest with you. I  
4 checked the records. The computer showed  
5 me that his work performance or the jobs  
6 he had been given weren't any different  
7 than anybody else.

8 Q Did you discuss this with the union  
9 representative that was there at the  
10 meeting?

11 A I didn't go back to Pat and discuss this.  
12 I did not go back to Dayved and I wish I  
13 had gone back and told Dayved that I did  
14 check into it and found -- I didn't see  
15 any substance to it.

16 Q Were there any other meetings that you  
17 recall attending?

18 A Yes. There was another one after that, I  
19 don't know, three, six months later, I'm  
20 not sure of the exact date. And it was  
21 again about the harassment or, if you

1 will, that Ron was picking on Dayved.  
2 Dayved had asked at one time to be  
3 included on the Rex Roth team and at that  
4 time, he had addressed me about it and I  
5 had talked to Ron about that, about  
6 putting him on that team. And at that  
7 time, the team had already been formed  
8 and it was also right in the time period  
9 when the team concept in there was kind  
10 of fading away, the teams weren't meeting  
11 as often. And, in fact, I'm not even sure  
12 the Rex Roth team met after that or not  
13 to be quite honest with you. So that was  
14 another issue that had been addressed.

15 Q Do you recall any other meetings that you  
16 attended in response to Mr. Woodard's  
17 complaints?

18 A No, those were the only three that I  
19 recall.

20 Q Do you recall attending any meetings in  
21 which racial discrimination was brought

1 up by Mr. Woodard or anybody else in the  
2 meeting?

3 A No.

4 Q Now, did Mr. Woodard come to you  
5 indicating that there was a picture of a  
6 burning cross with KKK in the bathroom?

7 A I don't recall Dayved coming directly to  
8 me, but I do remember the incident, yes.

9 Q Did you personally do anything when you  
10 heard this?

11 A Yes, I did. I immediately went to the  
12 restroom that was in question, the men's  
13 room there, and I looked in that restroom  
14 and I did not see anything on the walls.  
15 I then went, I did go to a second men's  
16 room, the larger shower room/restroom,  
17 and looked in there. Now, there was  
18 derogatory stuff written on the wall, but  
19 there was nothing racist or directed  
20 toward Dayved individually, okay.

21 Q What type of derogatory things were on

1 the wall?

2 A Well, there's stuff written about other  
3 workers, you know, the guys will write  
4 something on there maybe about a football  
5 teams sometimes, that kind of stuff.

6 Q Nothing about Dayved?

7 A Nothing about Dayved. I also asked Rod  
8 Berry about that. Rod Berry is our  
9 janitor and asked him, because Rod is  
10 very good about covering that stuff over  
11 as soon as he sees it and I asked him if  
12 he had seen anything --

13 MR. JOHNSON: I'm just going to  
14 make an objection if he's going to  
15 say what Rod Berry said.

16 MS. PETERSEN: Rod is going to  
17 be testifying as well.

18 THE JUDGE: I'll allow it then.

19 BY MS. PETERSEN:

20 Q You may continue.

21 A I asked Rod about that and Rod had not

1           seen anything in that particular restroom  
2           and so I thought, well, maybe I missed  
3           it, somebody already painted over it.  
4           Rod had had a habit through the years  
5           when I was the plant engineer prior to  
6           becoming a departmental manager there,  
7           Rod had had a habit of taking myself into  
8           the restroom and showing me these kind of  
9           writings if they were really serious or  
10          if they're extremely derogatory. He  
11          would take me in and show me.

12        Q       What kind of writings are you referencing  
13               that would be really derogatory?

14        A       Oh, something with a lot of foul language  
15               directed at a supervisor, things like  
16               that.

17        Q       Okay. Did you ever receive any complaints  
18               from Mr. Woodard directly regarding Mr.  
19               Sayers treating him unfairly or picking  
20               on him?

21        A       Well, yes, those led up to those

1 meetings.

2 Q Okay, so he complained to you directly?

3 A I believe he said something to me out on  
4 the floor one day, I was passing by him  
5 and I think we talked about it.

6 Q Then you had the meeting?

7 A But then we had the meeting.

8 Q Did any other coworkers in Ron Sayers'  
9 department have complaints to you about  
10 Mr. Sayers?

11 A There was one other employee in  
12 particular that had a clash with Ron  
13 where it was like a personality conflict,  
14 if you will.

15 Q What were that person's complaints?

16 A He felt that just Ron picked on him.

17 Q In what way?

18 A I don't know, maybe just constantly  
19 harassing him. This other employee was a  
20 first shift employee and he never  
21 complained to me about the jobs that he



1                   was given, it was that kind of -- he just  
2                   felt Ron kind of looked after him too  
3                   much and was hounding him.

4           Q           Was that person black?

5           A           No.

6           Q           White?

7           A           Yes.

8           Q           Any other complaints about Ron that you  
9                   received?

10          A           No, those are the only two.

11          Q           Any complaints about Rex Ryan?

12          A           No.

13                               MS. PETERSEN: Okay, that's all  
14                               I have. Thank you.

15                               THE JUDGE: You may cross.

16                               MR. JOHNSON: Thank you, your  
17                               Honor.

18                               \* \* \*

19                               **CROSS-EXAMINATION**

20                   BY MR. JOHNSON:

21          Q           Is it fair to say that all the meetings

1                   you had with regard to Mr. Woodard were  
2                   based on his complaints of his job  
3                   assignments?

4           A       Job assignment or inclusion with the Rex  
5                   Roth team, yes. He did mention that  
6                   particularly.

7           Q       Were there any meetings as to Mr.  
8                   Woodard's complaints about racial slurs?

9           A       In one of those meetings, that did come  
10                  up, yes. He mentioned the "N" word that  
11                  had been mentioned out on the floor.

12          Q       What was the result of the meeting where  
13                  Mr. Woodard brought up the use of racial  
14                  slurs?

15          A       I went out and I talked to the various  
16                  supervisors in that area and no one could  
17                  back up Dayved's claim that they had  
18                  heard that word or heard any of that  
19                  stuff going on. I was trying to  
20                  substantiate his claim.

21          Q       Your testimony is you were never able to

1 substantiate the claim?

2 A That's right.

3 Q Do you recall who it was alleged that  
4 made the racial slurs?

5 A It was never mentioned who made the slur  
6 that I recall.

7 Q Are you aware of any instances where  
8 anybody was using racial slurs?

9 A No, sir.

10 Q Do you know who Tom Thompson is?

11 A Sure, yes, I do.

12 Q Who is he?

13 A He's currently a supervisor or a line  
14 foreman.

15 Q All right.

16 A At PHB.

17 Q Would he be under you?

18 A At that time?

19 Q At that time.

20 A Yes.

21 Q Are you aware of any racial slurs made by

1 him?

2 A No, sir, I'm not.

3 Q If there were allegations of racial slurs  
4 made by a foreman or line supervisor, who  
5 would do the investigation into that?

6 Would that be your responsibility?

7 A Well, if it was brought to my attention,  
8 I would do an initial investigation, but  
9 then I would immediately go to Mr.

10 Hancock with it.

11 Q Who is Mr. Hancock?

12 A Ben Hancock, he's in charge of personnel,  
13 human resources.

14 Q Is there a written procedure for an  
15 employee to follow if they have  
16 complaints about racial slurs or problems  
17 with discrimination?

18 A Well, at that time, I'm not aware of any  
19 policy at that time. We have a  
20 harassment policy now at the shop.

21 Q But there was nothing in place during the

1 time?

2 A I wasn't aware of any, no.

3 Q And you don't know anything about an  
4 alleged racial slur by Mr. Thompson?

5 A Tom Thompson, no, I do not.

6 Q What about, do you know a Gary Gebhardt?

7 A Yes.

8 Q Who is he?

9 A Gary Gebhardt was another line foreman,  
10 supervisor, same level as Mr. Thompson.  
11 He worked for me there.

12 Q Are you aware of any allegations of  
13 racial slurs made by him?

14 A Yes. It would have been after the fact  
15 of Dayved being there.

16 Q Okay. How were you made aware of that?  
17 Did somebody complain directly to you  
18 about that?

19 A No, quite honestly I heard it secondhand  
20 that a slur or a comment was supposedly  
21 made and then was involved in the

1 investigation as to what had actually  
2 happened and all that.

3 Q But at the time, your position was -- you  
4 were the manager of the die cast  
5 division?

6 A Department, yes.

7 Q So directly under you would be the  
8 foreman or line supervisors?

9 A No, there's one level in between Ron and  
10 Rex were the shift supervisors and then  
11 those line foremen would report to them.  
12 Rex and Ron ran the actual shift on the  
13 different shifts, first or second shift.

14 Q So is it fair to say they would be --  
15 when I say they, I mean Ron Sayers and  
16 Rex Ryan, they would be one step above  
17 Gebhardt and Thompson?

18 A Yes, you're right.

19 Q If there were complaints about Gebhardt  
20 and Thompson, who would an employee take  
21 that complaint to?

1           A           Well, it would be one of two people.  
2                       Some of the workers would go directly to  
3                       their union steward, or to their union  
4                       committeeman or they would go directly to  
5                       Ron or Rex, one or maybe both. They might  
6                       do it together.

7           Q           Now, you testified that you had a few  
8                       meetings in regards to Mr. Woodard's job  
9                       assignments, but then you decided to  
10                      dismiss the claim, I think that's what  
11                      you testified to?

12          A           Yes.

13          Q           Was this a formal dismissal? Was there a  
14                       grievance filed? I mean how did you come  
15                       up with the determination?

16          A           I'm not aware of any grievance that was  
17                       written at all. You're talking about a  
18                       union grievance?

19          Q           Well, I'm asking there was a meeting.  
20                       Was it part of a union grievance?

21          A           No, it was not, it was an informal thing.

1 Q Was a union member there?

2 A Yes.

3 Q Who was there for the union?

4 A Well, Dayved was in the union and then  
5 Pat Camp was his steward at the time.

6 Q So it was brought by the union?

7 A Well, I guess so, if that's -- there  
8 wasn't any written grievance.

9 Q Was there an agreement that this  
10 complaint would be dismissed or did you  
11 just -- I don't want to put words in your  
12 mouth, but it sounded like you just  
13 determined that there was nothing there?

14 A I investigated, trying to find something  
15 that would back up Dayved's claim that  
16 there's something substantial here that  
17 it happened and I couldn't find anything  
18 that would substantiate what Dayved was  
19 claiming.

20 Q So you dismissed the complaints?

21 A Yes, at that point, I felt there wasn't



1 anything to it.

2 Q And you never told Mr. Woodard?

3 A That's correct. I said if I had anything  
4 to do over again, I would go back to  
5 Dayved and tell him that.

6 Q Did you tell the union or did it just  
7 stop?

8 A It just stopped at that point.

9 Q Were you part of the EEOC investigation  
10 in any way?

11 MS. PETERSEN: Which one?

12 BY MR. JOHNSON:

13 Q Mr. Woodard's?

14 A I'm not sure I understand what you're  
15 asking me.

16 Q Did anyone from the EEOC talk to you in  
17 regards to Mr. Woodard's complaints?

18 A I have to recall. I've spoken to the  
19 EEOC on a couple of occasions. Probably  
20 they did, yes, I think so.

21 Q But you're not aware of all these

1 incidents that we've talked about except  
2 for the issue of the assignments?

3 A No, and the only other issue would be the  
4 Gary Gebhardt issue that happened  
5 afterward.

6 Q In the chain of command, shouldn't you  
7 have gotten wind or news about these  
8 complaints, for example, of the racial  
9 slur being made?

10 A Well, that really depends. If a racial  
11 slur or whatever would have happened, if  
12 someone had felt strongly enough about  
13 that and brought it up through the chain  
14 of command, yes, I would have heard about  
15 it, but Rex and Ron deal with a lot, as  
16 shift supervisors, they deal with a lot  
17 of issues day-to-day on the floor amongst  
18 all of the people working there and there  
19 is a lot of things that happen on the  
20 floor that they take care of and it's not  
21 necessarily racial issues or any of that

1 kind of thing, but all kinds of little  
2 issues that happen that Ron and Rex deal  
3 with and take care of that never got to  
4 the level of the manager.

5 Q Is it fair to say then that Mr. Woodard  
6 had complaints that he voiced to Ron  
7 Sayers or Rex Ryan, you would not be  
8 aware of them unless Mr. Sayers or Mr.  
9 Ryan brought it to your attention?

10 A Or Dayved, right. If those two would not  
11 have come to me about it, I probably  
12 wouldn't have heard about it.

13 Q And your testimony is you didn't hear  
14 about the racial slur?

15 A I'm sorry?

16 Q You didn't hear about the complaint about  
17 racial slurs?

18 A Um-hmm.

19 Q You did not hear about that?

20 A No, no. If you're referring to anything  
21 -- the only racial slur that I can

1 confirm that I heard was when Dayved  
2 mentioned to me in our meeting about  
3 someone using the "N" word.

4 Q So you're not aware or let me ask you  
5 this, would you be aware of any  
6 investigation that PHB would do on their  
7 own in regards to allegations of racial  
8 discrimination made by an employee?

9 A Well, if PHB had an investigation going,  
10 I would only be aware of it if I had been  
11 called into a meeting and told about it  
12 or asked about it.

13 Q And that's true even though you were the  
14 manager of the whole division?

15 A Of the department.

16 Q Of the department where this allegedly  
17 took place?

18 A Well, yes. If there was a racial or  
19 something happen on the floor, racial  
20 slur or whatever, if the supervisor  
21 didn't bring it to me or if the

1 particular employee or union didn't bring  
2 it to me, I may not be aware of it.

3 MR. JOHNSON: That's all the  
4 questions I have.

5 MS. PETERSEN: I just had a  
6 couple questions.

7 \* \* \*

8 **REDIRECT EXAMINATION**

9 BY MS. PETERSEN:

10 Q Were you at a meeting with Pat Camp, the  
11 union representative, and Mr. Woodard and  
12 I don't who else might have been there,  
13 about -- it was discussed that Mr.  
14 Woodard had to write a letter because he  
15 had cracked some taps; do you remember  
16 something like that?

17 A Yes.

18 Q What do you recall?

19 A I don't recall the job or the machine or  
20 any of that, but --

21 Q First of all, why was it brought up, do

1           you know that?

2           A       Yes.  When an employee works at a machine  
3                   at our plant and in my department, if  
4                   something happens where an accident  
5                   happens where they may damage some  
6                   tooling or equipment or cause the job to  
7                   break down for a long period of time, or  
8                   even a short period of time, but it may  
9                   be costly breakdown, if what the employee  
10                  had done to cause that, sometimes, I'll  
11                  give you an example, they locate a  
12                  casting incorrectly in the tooling and  
13                  they cycle the machine and it damages the  
14                  tooling, that can be very costly, time  
15                  and money.  So we want the employee to  
16                  understand what they did wrong and so as  
17                  a habit, we would ask them, I  
18                  particularly in my department, it had  
19                  been going on before me, but when I took  
20                  over, I carried it on, to ask the  
21                  employee to write a quick note.  I ask

1           them to write them on whatever they have,  
2           napkins, piece of cardboard, tablet  
3           paper, didn't matter, just write it down  
4           on a piece of paper the machine you were  
5           on, what happened, yes, you know, and  
6           then sign it. That was my way of  
7           cementing in their mind that they  
8           understood what they did wrong and to try  
9           to prevent it from happening again.

10          Q       This has happened every time something is  
11                   damaged?

12          A       I'm not going to say every single time,  
13                   but I'm going to say for the vast  
14                   majority of time, yes.

15          Q       What if the machine was only down for  
16                   like 15 minutes?

17          A       I typically did not ask the employees to  
18                   write a letter or document it, if it was  
19                   a minor breakdown, because those things  
20                   happen often. But the more serious ones I  
21                   did ask them to do that.

1 Q Now, what was Mr. Woodard's complaint to  
2 your understanding?

3 A My understanding was he didn't feel he  
4 should have to do that.

5 Q Did he tell you why?

6 A I don't recall why, but it was just his  
7 feeling, maybe it wasn't -- because it  
8 wasn't a real costly breakdown. Taps  
9 aren't real expensive in comparison to  
10 big tooling dies and things.

11 Q What was your response or what was  
12 discussed?

13 A If I recall correctly, we still asked  
14 Dayved to write the letter regardless. We  
15 wanted it documented so he understood  
16 what he had done wrong.

17 Q And he had testified that the machine was  
18 only down for about 15 minutes. Was it  
19 then unreasonable for him to have to  
20 write the letters since you just  
21 testified that sometimes you don't have



1 to write the letter?

2 A Yes, I understand. My opinion was I  
3 didn't feel it was unreasonable. All I  
4 was asking for was just documentation of  
5 what happened so they understood, Dayved  
6 understood what he had done wrong, that's  
7 all it was.

8 Q Have people been asked to write letters  
9 where the machine was down for less than  
10 15 minutes?

11 A I'd have to answer probably.

12 Q And this is something that's asked of all  
13 types of employees?

14 A Yes, it wasn't just union employees, it  
15 was salaried employees, also, I mean  
16 supervision. If we had an issue with a  
17 supervisor who made a mistake, I've asked  
18 them to write them up, too.

19 Q And he did write the letter for his file?

20 A I don't recall if Dayved wrote it or not,  
21 I honestly don't.

1 MS. PETERSEN: Okay, that's all  
2 I have. Thank you.

3 THE JUDGE: Anything else,  
4 Attorney Johnson?

5 \* \* \*

6 **RECROSS-EXAMINATION**

7 BY MR. JOHNSON:

8 Q Would you have reviewed the letter that  
9 Mr. Woodard would have written for the  
10 file?

11 A Oh, absolutely. If he wrote it, I read  
12 it.

13 Q So if he made an allegation that he  
14 thought he was being treated differently  
15 based on his race, would you have done  
16 any investigation into that?

17 A Yes.

18 MR. JOHNSON: Nothing further.

19 THE JUDGE: You testified you've  
20 been employed there 20 years; is  
21 that correct?

1 THE WITNESS: Approximately,  
2 yes.

3 THE JUDGE: And during that 20  
4 years, you would have supervised  
5 Mr. Gebhardt on occasion?

6 THE WITNESS: That's correct.

7 THE JUDGE: And to your  
8 knowledge, Mr. Gebhardt was  
9 terminated?

10 THE WITNESS: Yes, he was.

11 THE JUDGE: Did you know how  
12 long Mr. Gebhardt had been an  
13 employee at PHB?

14 THE WITNESS: Oh, I'm not  
15 exactly sure. I think it's 28, 30  
16 years, long time.

17 THE JUDGE: So he was employed  
18 there longer than you had been?

19 THE WITNESS: Oh, absolutely,  
20 yes.

21 THE JUDGE: And the incident

1 that caused him to be terminated  
2 was an incident after Mr. Woodard  
3 stopped working there?

4 THE WITNESS: Yes.

5 THE JUDGE: To your knowledge,  
6 it was an isolated incident,  
7 something like that had never  
8 happened before involving Mr.  
9 Gebhardt?

10 THE WITNESS: To my knowledge,  
11 that's the only one that had  
12 happened with Mr. Gebhardt, yes.

13 THE JUDGE: You don't know  
14 whether Mr. Gebhardt had a history  
15 of being discriminatory or making  
16 racial comments?

17 THE WITNESS: I'm not aware of  
18 that, no.

19 THE JUDGE: Are you aware of any  
20 informal disciplinary actions taken  
21 against Mr. Gebhardt in the past

1                   regarding his behavior?

2                   THE WITNESS: We had a layoff at  
3                   one time, salaried layoff, where  
4                   Mr. Gebhardt was laid off, but it  
5                   wasn't as far as his performance or  
6                   discriminatory policies or anything  
7                   like that. He was laid off for a  
8                   period of time as lack of work.

9                   THE JUDGE: Did you find Mr.  
10                  Gebhardt to be a person that was  
11                  racially discriminatory against  
12                  other people?

13                  THE WITNESS: I have never heard  
14                  him say anything discriminatory. I  
15                  was in the meeting with the EEOC  
16                  lady and talked to her, but I  
17                  wasn't in there when apparently  
18                  Gary made a remark that supposed he  
19                  was racist.

20                  THE JUDGE: If there's no  
21                  history of Mr. Gebhardt acting in

1                   that fashion, why did PHB fire Mr.  
2                   Gebhardt?

3                   THE WITNESS: I can't answer  
4                   that. I did not make the decision  
5                   to fire him.

6                   THE JUDGE: Were you not part of  
7                   the decision-making process with  
8                   regard to Mr. Gebhardt being fired?

9                   THE WITNESS: No, I was not.

10                  THE JUDGE: Would you have been  
11                  the plant engineer at the time Mr.  
12                  Gebhardt was terminated?

13                  THE WITNESS: No.

14                  THE JUDGE: You still would have  
15                  been the manager of the die cast  
16                  department?

17                  THE WITNESS: That's correct.

18                  THE JUDGE: You were not  
19                  involved in Mr. Gebhardt's  
20                  termination, even though he worked  
21                  in the die cast department?

1 THE WITNESS: I was called up to  
2 Ben's office and told that Mr.  
3 Gebhardt was going to be  
4 terminated.

5 THE JUDGE: Can you tell me why  
6 you chose not to report to Mr.  
7 Woodard or to the union the results  
8 of your investigation regarding job  
9 assignments that Mr. Woodard  
10 received, considering you had a  
11 meeting with the union called in  
12 and everything?

13 THE WITNESS: As I testified  
14 earlier, that was poor judgment on  
15 my part to not go back to Dayved  
16 and tell him. That was a mistake on  
17 my part.

18 THE JUDGE: Were there any  
19 reports generated as a result of  
20 that meeting?

21 THE WITNESS: I had a habit of

1 writing myself notes whenever I had  
2 meetings and personnel-type  
3 meetings like that, when I meet  
4 with an employee, I go into the  
5 computer, I type up a couple  
6 sentences, I put the date, who was  
7 there, and I document those.

8 THE JUDGE: And your testimony  
9 is during the 20 years you've been  
10 employed here, you never had an  
11 occasion to overhear a racial slur?

12 THE WITNESS: No, I have not.

13 THE JUDGE: PHB, I understand to  
14 be what I would consider like a  
15 factory?

16 THE WITNESS: Um-hmm, factory,  
17 um-hmm.

18 THE JUDGE: And employees that  
19 usually work in factories tend to  
20 be crude, would you not agree?

21 THE WITNESS: I would agree.



1 THE JUDGE: And during the 20  
2 years, you never came across  
3 anybody whether you heard them  
4 specifically -- I guess my question  
5 is not did you hear "X" say this,  
6 but did you as you're walking  
7 through hear people use  
8 inappropriate language, perhaps  
9 racial slurs?

10 THE WITNESS: No, you described  
11 it very well. In my walking  
12 through the plant, I never heard  
13 that, never heard someone say  
14 something directly racial, but  
15 secondhand and third-hand, yes.  
16 You hear that all the time,  
17 somebody said this, somebody said  
18 that, not all the time, I shouldn't  
19 say that, occasionally.

20 THE JUDGE: Was any  
21 investigation done into those

1 secondhand comments that you may  
2 have heard?

3 THE WITNESS: Not that I'm aware  
4 of.

5 THE JUDGE: And to the best of  
6 your knowledge, during the time  
7 that you managed the die cast  
8 department, including Mr. Woodard  
9 or any other employee, nobody came  
10 to you with complaints with regard  
11 to racial discrimination?

12 THE WITNESS: No.

13 THE JUDGE: Thank you. Any  
14 follow-up, Attorney Petersen?

15 MS. PETERSEN: Nothing.

16 THE JUDGE: Attorney Johnson.

17 MR. JOHNSON: Just two or  
18 three, your Honor.

19 BY MR. JOHNSON:

20 Q Were you aware of any other lawsuits that  
21 were filed against PHB based on

1 discrimination?

2 A Well, I'm aware of a lawsuit about an  
3 employee named Fred Jackson, but I don't  
4 know if that was discrimination case or  
5 not.

6 MR. JOHNSON: Nothing further.

7 THE JUDGE: You may step down.

8 And your other witnesses that you  
9 have out there --

10 MS. PETERSEN: I have Pat Camp  
11 and Rod Berry, they're still out  
12 there.

13 THE JUDGE: And Rod Berry is  
14 whom?

15 MS. PETERSEN: He is the  
16 janitor.

17 THE JUDGE: And his testimony  
18 would be brief, I assume?

19 MS. PETERSEN: Five minutes.

20 THE JUDGE: All right, let's do  
21 Mr. Berry.

1 MR. PETERSEN: Okay.

2 THE JUDGE: And Mr. Camp's  
3 testimony?

4 MS. PETERSEN: He may be a  
5 little bit more because he was the  
6 union steward. Can we take him by  
7 depo?

8 THE JUDGE: Any objection to  
9 doing it by deposition?

10 MR. JOHNSON: No objection. We  
11 can do it when we do Mr.  
12 Goodwine's.

13 THE JUDGE: That's fine. Please  
14 come forward. Raise your right  
15 hand. Please have a seat in the  
16 witness stand to my left. Attorney  
17 Petersen, you may proceed with his  
18 testimony.

19 MS. PETERSEN: Thank you.

20 \* \* \*

**RODNEY BERRY,**

called as a witness on behalf of the  
Employer, and having been previously  
duly sworn, was examined and testified  
as follows:

**DIRECT EXAMINATION**

BY MS. PETERSEN:

Q Would you please state your name for the  
record.

A Rodney Berry.

Q Is that B-e-r-r-y?

A Right.

Q And you're employed by PHB currently?

A Yes.

Q What is your job there?

A Janitor.

Q And how long have you been janitor at  
PHB?

A Almost 15 years.

Q And is that also the length of time you  
were employed by PHB?

1 A Yes.

2 Q Now, during your employment at PHB, did  
3 you ever have occasion to see a picture  
4 of a burning cross or a KKK in the  
5 restrooms at PHB?

6 A Yes, I did, one time.

7 Q Actually, let me back up. You're  
8 responsible for cleaning the restrooms at  
9 PHB; correct?

10 A Yes.

11 Q How often do you do that?

12 A Every day.

13 Q And going back to my question, did you  
14 have occasion to see a picture of a  
15 burning cross with a KKK in the bathroom?

16 A Yes.

17 Q Do you remember when this occurred?

18 A The best I can remember is when one of  
19 our bosses who retired, Mr. Jack  
20 Spaulding, because I used to go get him  
21 to look at the stuff if there was a

1                   problem. We had some incredible messes in  
2                   there and he used to come take pictures  
3                   or something, come take a picture of it  
4                   and --

5           Q       Can you give us a timeframe of the last  
6                   five years?

7           A       Late nineties, probably.

8           Q       Okay. And exactly what did you see?

9           A       There was a, I remember a cross about  
10                  this tall, about --

11                               THE JUDGE: What's the  
12                               dimensions? Can you describe it  
13                               verbally?

14                               THE WITNESS: Probably about  
15                               maybe one-and-a-half feet high and  
16                               a little over a foot wide probably.

17       BY MS. PETERSEN:

18           Q       Do you know if it was in pen or marker,  
19                   can you recall?

20           A       Marker.

21           Q       And that was the cross?

1 A It was a burning cross and I remember  
2 seeing KKK on there.

3 Q And do you recall how long it was there?

4 A If I didn't get rid of it that day, it  
5 was gone by the next day because I had to  
6 wait until they took a picture or  
7 whatever and then our restrooms are kind  
8 of busy, so I'd wait until I got a chance  
9 to go paint over that, there might be  
10 somebody in there. If I didn't get it  
11 gone that day, it was gone the next day.  
12 This is in our large --

13 Q How did you remove it or what did you do?

14 A Spray paint.

15 Q What were you going to say?

16 A This was in our large men's room, there's  
17 like ten stalls in there.

18 Q Was it in one of the stalls or was it --

19 A One of the stalls on the wall.

20 Q And you said it was there for only at the  
21 most two days?



1           A           Yes, now, like I said, this is a long  
2                       time ago, it's possible when I saw it, I  
3                       have vacation time and sometimes I'm off  
4                       for a week, maybe two weeks. It could  
5                       have been at a time when I had just come  
6                       back from vacation and that, I don't  
7                       remember.

8           Q           Okay.

9           A           I just basically went in there and saw it  
10                      the one day and I got it taken care of.

11          Q           What's the longest amount of time you  
12                      were away on vacation or had the time  
13                      off?

14          A           Two weeks is the longest.

15          Q           So two weeks would have been the longest  
16                      that the drawing would have been on the  
17                      wall?

18          A           Yes.

19          Q           Was it possible that it had been there  
20                      for months?

21          A           No, not possible.

1 Q You spray-painted it over?

2 A Yes.

3 Q Did it return? Did another drawing  
4 return?

5 A I've never seen it since.

6 Q Was there any other type of racial  
7 comments or slurs on the bathroom walls  
8 that you noticed over the years?

9 A No. At the same time that was on there,  
10 there was another stall two stalls down,  
11 someone had black power written on there.

12 Q Did that go?

13 A I painted over that, too. Most of the  
14 stuff is like one person against another  
15 person and I've had them to the point  
16 where the last number of years, you  
17 hardly ever see anything on the walls  
18 anymore. This morning I painted two  
19 small things. It's the first time I've  
20 had to paint over in the last -- I don't  
21 know.

1 Q What were these small things about?

2 A I don't read them.

3 Q Was there any indication of a burning  
4 cross and the KKK that you saw, was that  
5 directed to Mr. Woodard?

6 A No.

7 Q Are you familiar with Mr. Woodard?

8 A Yes, he's worked for me when I was on  
9 light duty or something, he was helping  
10 me out for a while.

11 Q So you know him personally then?

12 A Yes.

13 Q You've had occasion to talk to him when  
14 he worked there?

15 A Right.

16 Q Now, did people, did they ever approach  
17 you if they saw something in the  
18 bathrooms they didn't like?

19 A Sometimes somebody would tell me there  
20 was something written about somebody and  
21 cover it up.

1 Q And would you comply?

2 A Right, yes.

3 Q Did Mr. Woodard ever approach you to tell  
4 you there was something in the bathroom  
5 that he didn't like?

6 A No.

7 Q Do you recall who told you about the  
8 cross in the bathroom, if anybody?

9 A Nobody told me.

10 Q You saw it for yourself?

11 A Yes.

12 Q Then what did you do after you saw that?  
13 did you tell anybody else?

14 A The way I remember, I went and told Jack  
15 Spaulding, who was in charge of all the  
16 die cast departments. That's when I did  
17 when I had a problem, then he would go  
18 take a picture or when he got a chance to  
19 do that and then he told me it was taken  
20 care of and to go and cover it up.

21 Q Did you ever see any writing or

1           derogatory comments or racist comments  
2           about Mr. Woodard in the bathroom?

3           A       Generally, I don't take time to read the  
4           stuff, you know, sometimes once in a  
5           while maybe I will, but generally, I'll  
6           paint it over.

7           Q       And you were the only janitor during the  
8           15 years you were employed there?

9           A       No.

10          Q       Who else was janitor?

11          A       Ernie McIntyre (phonetic).

12          Q       When was he working there?

13          A       Probably the first three years I was  
14           there, he was on first shift and I was on  
15           second.

16          Q       So for the past 12 years, you have been  
17           the only janitor at PHB?

18          A       Right.

19                   MS. PETERSEN: That's all I  
20           have. Thank you.

21                   THE JUDGE: Cross.

1 MR. JOHNSON: Thank you.

2 \* \* \*

3 **CROSS-EXAMINATION**

4 BY MR. JOHNSON:

5 Q In regards to seeing graffiti in the  
6 bathroom in terms of the KKK sign or a  
7 burning cross, your testimony is that  
8 only happened once?

9 A That I --

10 Q That you're aware of?

11 A That I'm aware of.

12 Q Could it have happened on more than one  
13 occasion?

14 A I never saw it. If it did happen, then  
15 somebody else would have had to have  
16 covered it over.

17 Q And when to the best of your  
18 recollection, when did this occur?

19 A Like I said, it was when Jack Spaulding  
20 was still there, so he left sometime in  
21 the late nineties, '97, '98, somewhere

1 around there.

2 Q Did you ever receive a complaint from  
3 Butch Smith stating that Mr. Woodard was  
4 complaining about graffiti in the  
5 bathrooms?

6 A No.

7 Q Did anyone ever tell you to go remove or  
8 paint over any discriminatory graffiti in  
9 the bathroom?

10 A Just things about them personally, not --  
11 just like somebody telling me something  
12 wrote something about me and some girl.

13 Q All right, so you're not aware -- let me  
14 ask you this, did you ever hear a  
15 complaint made by Dayved Woodard that  
16 there was graffiti of a discriminatory  
17 nature in the bathroom for a period of  
18 weeks?

19 A No.

20 Q Are you hearing this for the first time  
21 when I'm saying it to you?

1 A I've been to a couple hearings at work  
2 where I was told there was supposed to  
3 have been a burning cross on the wall --  
4 not in the restroom that I saw it, but in  
5 another restroom over by our 1000-ton two  
6 machine, small, like a one-man restroom,  
7 I was told that was on the wall there and  
8 I never saw it there. That's generally a  
9 restroom where people write little things  
10 occasionally, they cover it up  
11 themselves. The only thing I ever saw  
12 really bad in there, one time there was a  
13 drawing of a person who was about this  
14 high --

15 MR. PETERSEN: How high is that?

16 THE WITNESS: Probably about six  
17 feet, about life-size, and I went  
18 and told Ben and he came down and  
19 looked at it and the restroom was  
20 painted after that. Other than  
21 that, it's something like little



1 things about the foremen or  
2 something like that, they all cover  
3 it up themselves.

4 BY MR. JOHNSON:

5 Q But you did hear about this?

6 A Yes.

7 Q Who told you about it?

8 A I was told just in the hearings.

9 Q What kind of hearings?

10 A I don't actually know. I was just  
11 brought in, Ben was there, our lawyer.

12 Q Who was your lawyer at that hearing?

13 A Mr. Zamboni (phonetic). And I talked to  
14 him the one time, they brought me in and  
15 asked me about it and then there was a  
16 second time, there was a woman, she  
17 represented somebody, I don't know, I  
18 took her into the restroom and showed  
19 her.

20 Q What did you show her?

21 A There was a couple little things written

1 on the wall.

2 Q Was there a burning cross and KKK sign?

3 A No.

4 Q But that wasn't a restroom that you  
5 regularly went into or cleaned; is that  
6 fair?

7 A Right.

8 Q Okay. So there could have been a cross  
9 and a KKK there for a few weeks without  
10 you knowing about it?

11 A I would have noticed something like that.

12 THE JUDGE: Let's back up. Do  
13 you clean that bathroom?

14 THE WITNESS: Yes.

15 THE JUDGE: And do you clean it  
16 every day?

17 THE WITNESS: Yes.

18 THE JUDGE: Because one of the  
19 questions he asked you, is that a  
20 bathroom that you do not regularly  
21 clean and you said yes.

1 THE WITNESS: I didn't hear him.

2 THE JUDGE: You didn't hear him.

3 So just to make sure we understand  
4 your testimony, that is a restroom  
5 that you regularly go into?

6 THE WITNESS: Yes, every day.

7 THE JUDGE: You may continue.

8 BY MR. JOHNSON:

9 Q And you've never observed any graffiti in  
10 this restroom that we're talking about?

11 A No.

12 Q And this is a one-stall restroom?

13 A I never observed the burning cross or  
14 KKK.

15 Q And it is your testimony that you clean  
16 that bathroom every day?

17 A Yes.

18 Q Do you agree that there were complaints  
19 made by Mr. Woodard in regards to the  
20 letters KKK and a burning cross?

21 A From what I was told at these hearings,

1           that's it.

2           Q       And you never received any direction from  
3                   any of your supervisors telling you to  
4                   paint over any racially derogatory  
5                   pictures?

6           A       No. If they had, no one was there, they  
7                   would have told me.

8                   MR. JOHNSON: That's all the  
9                   questions I have.

10                  MS. PETERSEN: Nothing further.

11                  THE JUDGE: During the 15 years  
12                   that you have been employed there  
13                   as a janitor, have you had occasion  
14                   to overhear any racial slurs or  
15                   racial comments while on the work  
16                   floor doing your job?

17                  THE WITNESS: If I've heard  
18                   anything, it's just in joking, when  
19                   they were with each other, people  
20                   of different races just -- but I  
21                   don't see it there.

1 THE JUDGE: So you have heard  
2 racial slurs, but you thought it  
3 was in a joking environment?

4 THE WITNESS: Yes, both ways.

5 THE JUDGE: You don't --

6 THE WITNESS: Just people,  
7 they're friends, they get along.

8 THE JUDGE: In your opinion,  
9 there's never any racial slurs made  
10 in a malicious way?

11 THE WITNESS: I'm not saying  
12 that it's not there, but it's not  
13 that I've seen. I'm by myself most  
14 of the time.

15 THE JUDGE: Actually you're like  
16 a fly on the wall, so you could  
17 hear things that other people may  
18 not hear so that's why I'm asking  
19 you that. Are there racial slurs  
20 being tossed around back and forth  
21 and maybe nonchalantly or maybe

1 maliciously?

2 THE WITNESS: No.

3 THE JUDGE: Thank you. Any  
4 follow-up, Attorney Petersen?

5 MS. PETERSEN: Nothing further.

6 THE JUDGE: Attorney Johnson?

7 MR. JOHNSON: No, your Honor.

8 THE JUDGE: Thank you, Mr.  
9 Berry. You may step down and  
10 you're free to go.

11 All right, you can complete the  
12 rest of the lay testimony in this  
13 matter by deposition. This record  
14 will close out by mail.

15 Independent psychological  
16 evaluation, has one been scheduled?

17 MS. PETERSEN: No, your Honor.  
18 I don't know if it was discussed at  
19 one of the prior hearings. Mr.  
20 Gaughan had told me he had  
21 requested that it be bifurcated.

1 Do you know anything about that at  
2 all?

3 THE JUDGE: Bifurcate what?

4 MS. PETERSEN: The abnormal  
5 working conditions issue from the  
6 medical issue.

7 THE JUDGE: I don't have any  
8 notes that I was going to  
9 bifurcate. I don't want to  
10 misspeak. Maybe I did, but I  
11 normally write that stuff down.

12 MS. PETERSEN: I didn't see it  
13 in the transcript.

14 THE JUDGE: Attorney Johnson has  
15 been here for the last two hearings  
16 --

17 MR. JOHNSON: Unless it  
18 occurred at the first hearing when  
19 Mr. Connelly was still representing  
20 Mr. Woodard, I didn't see anything  
21 in the original transcript either.

1 THE JUDGE: You know what, I  
2 don't know I would bifurcate that  
3 issue because how can I bifurcate  
4 -- I don't know. I guess you're  
5 asking me to factually bifurcate  
6 whether those factual events truly  
7 occurred and if they truly  
8 occurred, do they rise to the level  
9 of an abnormal working condition.

10 MS. PETERSEN: Correct.

11 THE JUDGE: If I find that it is  
12 an abnormal working condition --

13 MS. PETERSEN: Then we continue  
14 with medical.

15 THE JUDGE: Why would you  
16 continue with medical?

17 MS. PETERSEN: If you said --  
18 oh, you said if it is or is not?

19 THE JUDGE: If it isn't an  
20 abnormal working condition and he  
21 did experience what he did



1 experience, why would you -- then  
2 you're going to say, well, that may  
3 have happened, but he didn't have a  
4 psychological episode as a result  
5 of it? I mean so why would I  
6 bifurcate I guess is the point.  
7 You all can discuss it amongst  
8 yourselves if you want. The only  
9 reason to bifurcate would be to  
10 save the money of not deposing  
11 experts in this matter and going  
12 down the road of presenting medical  
13 evidence that he, in fact, has  
14 whatever condition he has and I'm  
15 not sure there's been a diagnosis  
16 attached to his -- what he  
17 described as rage.

18 MS. PETERSEN: I think that  
19 might be a separate issue and  
20 whether he was subjected to  
21 abnormal working conditions, even

1 if he was, whether he suffered from  
2 some type of mental illness, you  
3 know, that's diagnosed by a  
4 psychological or psychiatric  
5 expert.

6 THE JUDGE: My gut reaction is  
7 not to bifurcate.

8 MS. PETERSEN: So we proceed  
9 with our independent exam?

10 THE JUDGE: You know what,  
11 review the transcript. If I said I  
12 would bifurcate and we've had this  
13 discussion, I'll reconsider, but I  
14 don't recall having a discussion to  
15 bifurcate and usually I'm the one  
16 that mentions bifurcations because  
17 I like to bifurcate, I just can't  
18 see doing it in this case because  
19 there's a lot of abnormal working  
20 conditions that involve perceptions  
21 and those types of things that

1 really comes in through medical  
2 evidence.

3 MS. PETERSEN: So it's up to  
4 you.

5 THE JUDGE: I would not  
6 bifurcate. But my point is if I did  
7 say I would bifurcate, I just don't  
8 remember and let me know and I'll  
9 reconsider.

10 MS. PETERSEN: I didn't see it  
11 discussed during the transcript,  
12 but I wasn't sure if it was  
13 discussed off the record or  
14 anything like that. But you're  
15 saying you don't --

16 THE JUDGE: I don't feel  
17 comfortable bifurcating. You all  
18 have to stipulate to the  
19 bifurcation before I'd even  
20 consider it. I don't think you  
21 guys have really talked about it,

1 so you probably need to talk about  
2 it before you make that request to  
3 me and that's a call on your part  
4 and if you guys discuss it amongst  
5 yourselves and you think  
6 bifurcation is the approach you all  
7 would like to follow, then you make  
8 the request to me and then I'll  
9 grant it or deny it. That's the  
10 action with regard to that.

11 MS. PETERSEN: We will proceed  
12 with depositions.

13 THE JUDGE: Do depositions and  
14 I'm going to assume we are not  
15 bifurcating because I've not made a  
16 decision to bifurcate, so you do  
17 your depositions of the lay  
18 witnesses, you move forward and you  
19 have your independent medical or  
20 independent psychological  
21 examination of the claimant,

1 claimant deposes their expert, then  
2 you depose your expert. I'm  
3 thinking we are now towards the end  
4 of January. I would think that the  
5 two witnesses, Mr. Goodwine and Mr.  
6 Camp, are lay witnesses and they  
7 should be readily available, that  
8 you should be able to complete lay  
9 depositions during the month of  
10 February, independent medical  
11 examination has to be completed by  
12 the end of March, claimant has to  
13 depose their expert by the end of  
14 April, employer deposes their  
15 expert by the end of May, record  
16 closes July 29th. By July 29th, I  
17 need to receive deposition  
18 transcripts, bill of costs on  
19 behalf of the claimant, itemization  
20 of legal services on behalf of the  
21 claimant, and briefs from the

1 parties.

2 Anything else on behalf of the  
3 claimant today?

4 MR. JOHNSON: Nothing, your  
5 Honor.

6 THE JUDGE: The employer?

7 MS. PETERSEN: Nothing.

8 THE JUDGE: All right, counsel,  
9 thank you.

10 MR. JOHNSON: Thank you, your  
11 Honor.

12 MS. PETERSEN: Thank you, Judge.

13 (Whereupon, the hearing was concluded.)

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**DAYVED WOODARD**

**VS**

**PHB**

**VS**

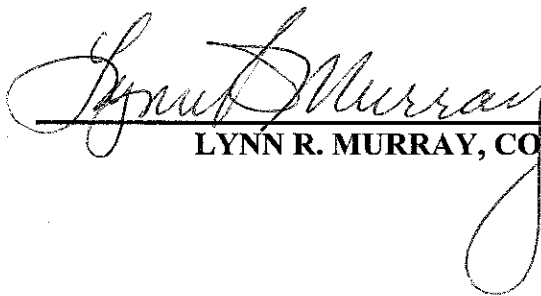
**ROYAL & SUN ALLIANCE**

**C E R T I F I C A T I O N**

I, LYNN R. MURRAY, do hereby certify that to the best of my knowledge, the proceedings and evidence are contained fully and accurately in the record taken by me of the hearing in the above-entitled matter, and that this is a true and correct transcript of the same.

5-23-05

**DATE**



**LYNN R. MURRAY, COURT REPORTER**